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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 AAT BIOQUEST, INC.,
7 Plaintiff,

8 v.

9 TEXAS FLUORESCENCE
10 LABORATORIES, INC.,
11 Defendant.

Case No. [14-cv-03909-DMR](#)

**ORDER DENYING TEFLABS'S
MOTION FOR STAY OF EXECUTION
OF JUDGMENT WITHOUT BOND**

Re: Dkt. No. 111

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13 On November 30, 2015, the court issued Findings of Fact and Conclusions of Law
14 following a bench trial on damages in this patent case. [Docket No. 89]. On January 5, 2016, the
15 court entered judgment in the amount of \$428,078.69 in favor of Plaintiff AAT Bioquest, Inc.
16 (“AAT”) and against Defendant Texas Fluorescence Laboratories, Inc. (“TEFLABS”). [Docket
17 No. 96]. The court denied a motion for reconsideration, [Docket No. 101], and TEFLABS filed an
18 appeal on April 28, 2016. [Docket No. 102].

19 TEFLABS now asks the court to stay execution of the judgment without a supersedeas
20 bond pending appeal, as well as pending reexamination of the patent at issue in this case (the ‘165
21 patent). AAT opposes. This matter may be determined without oral argument. Civil L.R. 7-1(b).

22 **I. LEGAL STANDARDS**

23 A party may obtain a stay of execution of a judgment pending appeal upon court approval
24 of a supersedeas bond. Fed. R. Civ. P. 62(d). Courts examine the following factors to determine
25 whether to waive the supersedeas bond requirements:

26 (1) the complexity of the collection process; (2) the amount of time required to
27 obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that
28 the district court has in the availability of funds to pay the judgment; (4) whether
the defendant's ability to pay the judgment is so plain that the cost of a bond would

1 be a waste of money; and (5) whether the defendant is in such a precarious
2 financial situation that the requirement to post a bond would place other creditors
of the defendant in an insecure position.

3 Cotton ex rel. McClure v. City of Eureka, Cal., 860 F. Supp. 2d 999, 1028 (N.D. Cal. 2012), citing
4 Dillon v. City of Chicago, 866 F.2d 902, 904-05 (7th Cir. 1988); see also Kranson v. Federal
5 Express Corp., 2013 WL 6872495, at *1 (N.D. Cal. Dec. 31, 2013) (noting that courts within
6 Ninth Circuit regularly use Dillon factors in determining whether to waive the bond requirement).

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8 **II. ANALYSIS**

9 The court first determines whether it should exercise its discretion to waive Rule 62(d)'s
10 supersedeas bond requirement. As to the first Dillon factor, the collections process is likely to be
11 complex, which counsels against waiving the bond requirement. AAT has retained a specialist to
12 collect the judgment, and TEFLABS has retained bankruptcy counsel to file for Chapter 11
13 protection in the event that AAT attempts to execute its judgment.

14 With respect to the second factor, neither side discusses the amount of time to obtain
15 judgment after affirmance on appeal. Given TEFLABS's admittedly precarious financial position
16 discussed below, any further delay while the case works through the appeal process is likely to
17 jeopardize AAT's ability to collect a judgment, especially without an appeal bond in place.

18 The third and fourth factors weigh heavily against granting a stay without a bond. The
19 court has no confidence that TEFLABS will have funds available to satisfy the judgment. Dr.
20 Akwasi Minta, TEFLABS's Chairman and Founder, has stated under oath that TEFLABS does not
21 have sufficient assets to secure an appeal bond, that the company's current accounts payable
22 exceeds its receivables, and that it intends to file for bankruptcy if AAT attempts to collect the
23 judgment. Minta Dec. [Docket No. 111-3] at 2-3.

24 The fifth factor is moot. TEFLABS has gone on record that it cannot obtain a supersedeas
25 bond due to its weak financial position. Therefore, the question of whether a bond would risk the
26 position of other creditors is academic.
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1 In sum, the court declines to stay execution of judgment pending appeal without the
2 posting of a supersedeas bond.

3 The court now turns to TEFLABS's request that the court exercise its inherent authority to
4 stay execution of the judgment pending reexamination of the '165 patent. Courts have inherent
5 power to manage their dockets and stay proceedings, including the authority to order a stay
6 pending conclusion of a USPTO examination. See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-
7 27 (Fed. Cir. 1988) (citation omitted). Courts generally are called upon to exercise such authority
8 at an earlier point in the litigation, prior to entry of judgment.¹ TEFLABS has not cited, and this
9 court has not identified a single case in which a court has issued a post-judgment stay pending
10 reexamination. At least one court has suggested that in such circumstances, the Rule 62(b) factors
11 governing issuance of a stay pending disposition of a post-trial motion are instructive. See, e.g.,
12 *Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.*, 2009 WL 2047635, at *2 (C.D. Cal. July 8,
13 2009). These factors are:

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15 (1) whether the stay applicant has made a strong showing that he is likely to
16 succeed on the merits; (2) whether the applicant will be irreparably injured
17 absent a stay; (3) whether issuance of the stay will substantially injure the
18 other parties interested in the proceeding; and (4) where the public interest
lies.

19 *United States v. Moyer*, 2008 WL 3478063, at *6 (N.D. Cal. Aug. 12, 2008), citing *Hilton v.*
20 *Braunskill*, 481 U.S. 770, 776 (1987).

21 Applying these factors, the court finds that TEFLABS has not made a strong showing that
22 it is likely to succeed in its reexamination bid. The arguments in TEFLABS's moving papers are
23 brief and largely conclusory on this point. See Motion [Docket No. 111] at 4. TEFLABS did not
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27 ¹ In such instances, the court considers the following factors: (1) whether discovery is complete
28 and whether a trial date has been set; (2) whether a stay will simplify the issues in question and
trial of the case; and (3) whether a stay would unduly prejudice or present a clear tactical
disadvantage to the nonmoving party. See *Telemac Corp. v. Teledigital, Inc.*, 450 F. Supp. 2d
1107, 1111 (N.D. Cal. 2006).

1 file a reexamination petition until after this court entered final judgment against it, which smacks
2 of delay rather than merit.

3 As to the second and fourth factors, any irreparable harm that TEFLABS may suffer by
4 having to pay the judgment now rather than later is the result of its own behavior. This court
5 found that TEFLABS willfully infringed AAT's '165 patent. In so holding, this court held that
6 TEFLABS made unsupported attorney arguments on its invalidity defenses without citing to
7 evidence, and made numerous sales of the infringing product after entry of a permanent injunction.
8 See Findings of Fact and Conclusions of Law [Docket No. 89] at 17-22. Issuance of a stay would
9 go against public interest for the same reasons.
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11 Finally, it is clear that the issuance of a stay would substantially injure AAT's ability to
12 ultimately collect on its judgment. As noted by AAT, the USPTO's published statistics indicate
13 that as of September 2015, reexamination proceedings take an average of 21.63 to 50.33 months
14 prior to any appeal. Opposition [Docket No. 112] at 1, n.1. A two to four year delay in the ability
15 to commence collections proceedings could greatly diminish AAT's ability to collect its judgment,
16 given Dr. Minta's admission that TEFBLABS's monthly payables outstrip its receivables at this
17 time, and that it does not have sufficient assets to secure a bond.
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19 TEFLABS has not established that it is entitled to a stay pending reexamination.

20 **III. CONCLUSION**

21 For the foregoing reasons, the court denies TEFLABS's requests for a stay of execution of
22 judgment without a supersedeas bond pending appeal, or pending reexamination of the '165
23 patent.
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25 **IT IS SO ORDERED.**

26 Dated: October 4, 2016
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