

1 reexamination and have not been rejected. Plaintiff seeks to assert claim 3 here.

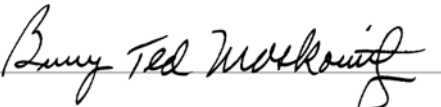
2 Claim 3 is a dependent claim, which incorporates claims 1 and 2. Although claim 3
3 incorporates all the elements of the rejected claims 1 and 2, it adds some limitations. So
4 even if Plaintiff is unsuccessful on appeal and the PTO's rejection of claims 1 and 2 stands,
5 claim 3 might still be valid because of the additional limitations.

6 The Court therefore lifts the stay so Plaintiff can move to amend its complaint to assert
7 infringement based on claim 3. The stay on all other claims in the '182 Patent remains in
8 effect.

9 Defendant argues Plaintiff should not be allowed to proceed for many reasons,
10 including that the limitations in claim 3 are obvious, Plaintiff is equitably estopped because
11 it waited too long to assert claim 3, and others. The Court does not consider those
12 arguments now. Defendant can raise them in opposition to Plaintiff's motion to amend or,
13 if the motion to amend is granted, in a motion to dismiss. The Court does not now determine
14 whether the litigation of infringement of claim 3 might draw the Court into analysis of claims
15 1 and 2 to such a degree that the present stay should be extended to claim 3.

16 **IT IS SO ORDERED.**

17 DATED: June 22, 2010

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20 Honorable Barry Ted Moskowitz
United States District Judge

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