

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MORRIS TUREK,)	
)	
Plaintiff/Relator,)	
)	
VS.)	NO. 10-CV-846-WDS
)	
MCNEIL-PPC, INC.,)	
)	
Defendant.)	

ORDER

STIEHL, District Judge:

Relator Morris Turek filed this qui tam action for false patent marking under 35 U.S.C. § 292. Pending before the Court is defendant McNeil-PPC, Inc.’s motion to stay this case pending congressional action (Doc. 68). Defendant has also moved to dismiss the amended complaint (Doc. 62) and moved to transfer venue (Doc. 63). Relator has responded to the motion to transfer (Doc. 65), and defendant has replied (Doc. 66). Relator has also responded to the motion to dismiss (Doc. 67). In the event the Court grants its motion to stay, defendant asks for 14 days after the stay is lifted to file a reply brief.

The U.S. Senate has passed the America Invents Act, S. 23, 112th Cong. (2011). The Act would amend the false-patent-marking statute, 35 U.S.C. § 292(b), to require a plaintiff in a civil action to have “suffered a competitive injury as a result of a violation of this section.” In addition, the plaintiff could only sue for “recovery of damages adequate to compensate for the injury.” A similar measure has been passed in the U.S. House of Representatives. Leahy-Smith America Invents

Act, H.R. 1249, 112th Cong. (2011). Both Senate and House versions of the Act would apply to all pending cases.

Defendant believes the Act will dispose of this action. It therefore suggests a stay of this case will benefit both parties and preserve the Court's resources in deciding the pending motions to dismiss and transfer. Finally, defendant does not believe either party would be prejudiced if a stay is granted. Relator does not oppose granting the stay.

The Court **FINDS** that both parties, as well as the Court's resources, will benefit from a stay of this action pending the outcome of the America Invents Act. Defendant's unopposed motion to stay (Doc. 68) is hereby **GRANTED**. The parties are directed to inform the Court when the America Invents Act is either signed into law or defeated. In light of this stay, defendant's amended motions to dismiss (Doc. 62) and transfer (Doc. 63) are **DENIED** with leave to refile after the stay is lifted.

Regarding the future filing of reply briefs, defendant is reminded of the Court's local rule 7.1: **"Reply briefs are not favored and should be filed only in exceptional circumstances.** The party filing the reply brief shall state the exception circumstances." SDIL-LR 7.1(c), (g) (emphasis in original).

IT IS SO ORDERED.

DATED: July 29, 2011

/s/ WILLIAM D. STIEHL
DISTRICT JUDGE