

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

COOK INCORPORATED,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:09-cv-01248-WTL-TAB
)	
ENDOLOGIX, INC.,)	
)	
Defendant.)	

ORDER DENYING PLAINTIFF'S MOTION TO LIFT STAY

This cause is before the Court on Plaintiff's motion to lift stay [Docket No. 40], to which Defendant objects. The Court previously stayed this action following briefing and oral argument because the Patent and Trademark Office ("PTO") was reexamining the patents at issue in this litigation. [Docket No. 39.] The '706 patent has now emerged unscathed from the PTO review, but review of the '777 patent continues. For the reasons set forth in Defendant's objection, the Court denies Plaintiff's motion to lift stay.

Specifically, the previous stay was based upon the pending PTO action on both the '706 and '777 patents. While review of the '706 patent has concluded, review of the '777 patent continues. Plaintiff brought this single action to challenge both patents, which are part of a single product. [Docket No. 42 at 7-8.] So the ongoing review of the '777 patent remains a hurdle to lifting the stay. Proceeding otherwise risks duplicating these proceedings and increasing costs. In addition, as noted in the original stay order, Plaintiff struggles to show how delay will result in undue prejudice given that the '706 patent has expired and the '777 patent will expire relatively soon. [Docket No. 39 at 3.] Finally, the PTO's expedient review of the '706

patent suggests that the '777 patent will receive similar treatment.

For these reasons, and as more fully set forth in Defendant's objection, Plaintiff's motion to lift stay [Docket No. 40] is denied.

Dated: 04/12/2010

A handwritten signature in black ink, appearing to read "T. Baker", written above a horizontal line.

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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