EXHIBIT L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANE HIRSCHHORN,	)	
Plaintiff	)	
	)	
v.	)	No. 2:10-cv-1156-JF
	)	
CHURCH & DWIGHT CO., INC.,	)	
Defendant	)	

[PROPOSED] ORDER

Upon consideration of Defendant Church & Dwight Co. Inc.'s Motion for a Stay Pending the Federal Circuit's Decision on the Issue of Subject Matter Jurisdiction and any response thereto, it is hereby ORDERED that Defendant Church & Dwight Co., Inc.'s Motion is GRANTED. All pretrial proceedings are hereby STAYED pending the Federal Circuit's decision on the issue of subject matter jurisdiction in *Stauffer v. Brooks Brothers*, Fed. Cir. nos. 2009-1428, -1430.

5-17-10 John P. Fullam

FULLAM, J.

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED STATES ex rel.	§	
	§	
HEATHCOTE HOLDINGS CORP., INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 2:08-cv-00349-TJW
v.	§	
	§	
CHURCH & DWIGHT CO., INC.,	§	
	§	
Defendant.	§	

ORDER GRANTING UNOPPOSED MOTION TO MODIFY STAY

CAME IT TO BE HEARD this day Defendant Church & Dwight Co., Inc.'s Unopposed Motion To Modify Stay of Proceedings. This Court, having considered the motion finds that it is well taken and should be GRANTED.

IT IS ORDERED that this case is stayed until the United States Court of Appeals for the Federal Circuit decides both of the appeals in *Matthew A. Pequignot v. Solo Cup Company*, Case No. 1:07-cv-897 (E.D. Va.), *appeal docketed*, No. 2009-1547 (Fed. Cir. Aug. 28, 2009), and *Stauffer v. Brooks Brothers*, Case No. 08-cv-10369 (S.D.N.Y.), *appeal docketed*, No. 2009-1428, -1430, -1453 (Fed. Cir. July 7, 2009), or until the Federal Circuit otherwise resolves or terminates both of these appeals.

IT IS FURTHER ORDERED that notwithstanding the foregoing, either party may provide notice to the Court that it believes the stay shall be terminated before the appeals in these cases are decided or otherwise resolved or terminated by the Federal Circuit. In the event that such notice is filed with the Court, the stay will be lifted in 60 days, unless the opposing party moves the Court in that period for an order continuing the stay.

SIGNED this 3rd day of June, 2010.

T. JOHN WARD
UNITED STATES DISTRICT JUDGE

EXHIBIT N

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

O&G SEARCHQUEST, INC.,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-10-1164
	§	
THE PROCTOR & GAMBLE	§	
COMPANY, *et al.*,	§	
Defendants.	§	

ORDER

In accordance with the parties' Stipulation [Doc. # 11], it is hereby

ORDERED that this case is **STAYED AND ADMINISTRATIVELY CLOSED** pending the Federal Circuit's decision in *Stauffer v. Brooks Brothers*. Counsel are directed to notify the Court in writing when the Federal Circuit's decision is issued.

SIGNED at Houston, Texas, this **17th** day of **May, 2010**.

Nancy F. Atlas
United States District Judge

EXHIBIT O

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

O&G SEARCHQUEST, INC.,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-10-1004
	§	
McNEIL-PPC, INC.,	§	
Defendant.	§	

ORDER

In accordance with the parties' Stipulation [Doc. # 9], it is hereby

ORDERED that this case is **STAYED AND ADMINISTRATIVELY CLOSED** pending the Federal Circuit's decision in *Stauffer v. Brooks Brothers*. Counsel are directed to notify the Court in writing when the Federal Circuit's decision is issued.

SIGNED at Houston, Texas, this **24th** day of **May, 2010**.

Nancy F. Atlas
United States District Judge

EXHIBIT P

****E-filed 4/13/10****

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SAN FRANCISCO TECHNOLOGY, INC.,

Plaintiff,

v.

ADOBE SYSTEMS INCORPORATED, et al.,

Defendants.

_____/

No. C 09-6083 RS

ORDER RE PENDING MOTIONS

I. INTRODUCTION

Defendants in this action are fourteen wholly unrelated companies that market and sell wholly unrelated products. Plaintiff seeks to hold each company liable for allegedly violating 35 U.S.C. § 292 by marking its own products with expired patent numbers. Defendants have filed over twenty separate motions, that fall into four basic categories: (1) motions to dismiss based on the argument that plaintiff lacks standing, (2) motions to dismiss for an asserted failure to plead fraud with the requisite degree of particularity, (3) motions to sever and to transfer venue as to certain defendants, and (4) motions to stay pending the Federal Circuit's resolution of the standing issue in a pending appeal.

Because all of the defendants have been improperly joined in this action, the claims against each defendant will be severed. The claims against defendants who have sought transfer will be

transferred, as plaintiff has offered no opposition to the transfers apart from its unavailing argument that all these claims should be litigated in a single action. The claims against the remaining defendants will be stayed, pending the Federal Circuit's resolution of the threshold issue of standing in circumstances like these.

II. BACKGROUND

The defendants in this action make products ranging from computer software (Adobe Systems Incorporated), to firearms (Magnum Research, Inc.), to toothbrushes, tissues, and paper towels (Procter & Gamble).[1] Plaintiff San Francisco Technology, Inc. ("SF Tech") alleges that each defendant has marked certain of its own products with one or more expired patent numbers. Beyond alleging that it is a Delaware corporation with its principal place of business in San Jose, California, SF Tech discloses nothing about itself or the business in which it may be engaged. It does not contend that it is in competition with any of the defendants, or that their alleged conduct has caused it any harm. Rather, it brings this action solely as a *qui tam* proceeding to recover civil fines under 35 U.S.C. § 292.

III. DISCUSSION

A. Misjoinder of defendants

The complaint alleges no connection or relationship among any of the defendants or their products. Rule 20(b)(2) of the Federal Rules of Civil Procedure governs when multiple defendants may be joined in an action. It permits joinder of more than one defendant where:

[1] The other defendants and their products are: Brita Products Co.—water pitcher filters; Delta Faucet Co.—water faucets; Evans Manufacturing—tools for opening beverage bottles and cans; Evercare Co.—lint removal rollers; Graphic Packaging Int'l, Inc.—packaging products for beverage cans; Pavestone Company LP—paving stones; SC Johnson—shaving gels and creams, and Ziploc plastic bags; Spectrum Brands, Inc.—aquarium filters and Rayovac brand battery products; Super Swim Corp.—swimming products; Unilock, Inc.—landscaping products; West Coast Chain Mfg. Co.—key chain and retractor products.

> (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
>
> (B) any question of law or fact common to all defendants will arise in the action.

In opposing severance, SF Tech has focused solely on the requirement of subsection (B) that there be a common question of law or fact. The requirements of (A) and (B) are conjunctive, both must be satisfied. There is no tenable argument that the claims alleged against each of these separate defendants arise out of the "same transaction, occurrence, or series of transactions or occurrences."[2] While each defendant is alleged to have engaged in a similar *kind* of conduct, each defendant acted in a separate place and time when it put its allegedly mis-marked products on the market.

At oral argument, SF Tech argued that the circumstances here are analogous to patent infringement suits, where it is not uncommon to join otherwise unrelated defendants into a single infringement suit. In those actions, however, there is at a minimum the common "transaction" of the patents-in-suit having been issued by the PTO. Here, there is nothing but separate alleged violations of a particular statute.

Accordingly, there simply is no basis to join these fourteen defendants in a single suit. While only some defendants have moved for severance, Fed R. Civ. P. 21 authorizes the Court to sever misjoined parties on its own motion, and such severance is appropriate here. The Clerk will be directed to open new files as set out below.

B. Transfer

Magnum Research moves to transfer the action against it to the District of Minnesota. Delta Faucet moves for transfer to the Southern District of Indiana. Graphics Packaging seeks transfer to the Northern District of Georgia. All three defendants have shown that convenience and the interests of justice support the requested transfers under 28 U.S.C. § 1404(a). The sole basis of SF Tech's opposition to transfer is its contention that all defendants are properly joined in this

[2] Any suggestion that defendants are jointly or severally liable would be even less viable.

proceeding. At oral argument SF Tech expressly acknowledged that there is no basis to deny transfer after severance.

SF Tech does urge the court to reach—and to deny—the motions to dismiss brought under Rule 12(b)(6) prior to transferring these parties, arguing it would be unfair for defendants to obtain a "second bite of the apple" in the transferee court. Although this Court expressed some tentative and general views regarding the motions to dismiss, it did not address them to the extent that any of the defendants could be said to have already had a first bite of the apple.[3] Additionally, Magnum Research made arguments in its motion to dismiss that were unique to its particular circumstances. The Court did not express even any tentative views as to those arguments.

Finally, at the hearing Graphics Packaging raised a concern that it might be improper to grant the transfer motions without first concluding that SF Tech has Article III standing to pursue this action. Post hearing, Graphics Packaging submitted citations to some older authorities suggesting that jurisdictional questions generally are to be resolved prior to venue issues. In *Sinochem International Co. v. Malaysia International Shipping Corp*., 549 U.S. 422 (2007), however, the Supreme Court clarified that the only absolute prohibition is that against deciding issues going to the *merits* prior to finding that jurisdiction exists. "[A] federal court has leeway 'to choose among threshold grounds for denying audience to a case on the merits.'" *Id*. at 431 (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999) and *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 100-101 n. 3 (1998)).

The *Sinochem* court held that where resolution of the jurisdictional question would be complex and difficult, the trial court did not err in dismissing the case on *forum non conveniens* grounds without first establishing jurisdiction. 549 U.S. at 432. Although the court cautioned jurisdiction should be addressed first where it can be "readily determine[d]," it is proper to take the "less burdensome course" where it cannot. *Id. Sinochem* involved the common law doctrine of *forum non conveniens*, rather than a transfer under 28 U.S.C. § 1404(a). Courts have applied the principles of *Sinochem*, however to this context. *See In re: Limitnone, LLC*, 551 F.3d 572, 577 (7th

[3] Magnum Research appears to have contemplated that the Court would decide its motion to dismiss prior to reaching the transfer motion. Because Magnum has shown that transfer is appropriate, the Court will not prejudge the sufficiency of the complaint for the transferee court.

Cir. 2008) ("as § 1404(a) is nothing more than a codification of the traditional *forum non conveniens* rules without the attendant disadvantages of outright dismissal . . . it is appropriate to apply the same rules regarding the necessity of establishing jurisdiction to both.); *Pub. Employees' Ret. Sys. of Miss. v. Morgan Stanley*, 605 F.Supp.2d 1073 (C.D. Cal. 2009) (citing *Sinochem* and *Limitnone* for the proposition that a "decision to transfer for inconvenient forum is not a decision on the merits and therefore does not require a finding of jurisdiction.").

This is an appropriate case for exercising discretion to decide the transfer motions prior to any conclusive determination as to jurisdiction. The right of these three defendants to transfer to their home venues is abundantly clear; it was only by virtue of their improper joinder that there was any basis to assert this was a proper venue in the first instance. Conversely, resolving the question of whether SF Tech has Article III standing is not straightforward at all. While it is likely that this Court ultimately will have to determine that question as to the cases that will remain in this district, that does not support it doing so with respect to these three defendants, in cases that should have been separately brought in defendants' home districts from the outset. Accordingly, the motions to transfer will be granted.

C. Standing

Led by Proctor & Gamble, most defendants by joinder and/or separate motion seek dismissal on grounds that SF Tech has not alleged that it has suffered an injury in fact sufficient to give it standing under Article III of the Constitution. Two cases presently pending at the Federal Circuit have taken divergent approaches to this question. First, in *Pequignot v. Solo Cup Co.*, 640 F.Supp.2d 714 (E.D.Va. 2009), the court found that a private, non-competitor, plaintiff suing under 35 U.S.C. § 292 would ordinarily lack Article III standing, but for the *qui tam* nature of the statute. 640 F.Supp.2d at 718-719 ("Thus, without the special standing conferred by the qui tam aspects of § 292(b), Pequignot lacks standing to sue Solo because he fails to allege any actual or imminent injury to himself.) The *Pequignot* court found, however, that as a *qui tam* relator, the plaintiff effectively

is an assignee of the Government's interest in enforcing the statutory penalty, and therefore has standing. *Id.* at 719.[4]

In *Stauffer v. Brooks Bros.*, 615 F.Supp.2d 248 (S.D.N.Y. 2009), the court found that a non-competitor lacks Article III standing to bring a claim under 35 U.S.C. § 292. Noting that "all plaintiffs—including *qui tam* plaintiffs granted a statutory right of action—must satisfy the 'irreducible constitutional minimum' of standing," the court concluded that the lack of injury to the plaintiff, the government, or the public at large required dismissal of the action.

There appears to be little dispute that if the Federal Circuit affirms the decision in *Stauffer* there likely will be no way to distinguish it or to otherwise avoid its application to this case. Conversely, should *Stauffer* be reversed, that likely will preclude any further argument that SF Tech lacks standing here.[5]

As SF Tech points out, it is not the general rule that a stay will be granted simply because some appellate decision is pending that may have some bearing on the case at hand. In this instance, however, a stay pending a decision in the *Stauffer* appeal appears warranted. First, plaintiff cannot complain about a stay if the alternative is that this Court chooses to follow *Stauffer* and dismiss. If the Court declined to follow *Stauffer*, however, it seems inevitable that Federal Circuit will rule before these actions could proceed to judgment. Then, unless the decision is a reversal, dismissal of these actions likely would be required. The possibility that *Stauffer* may very well be reversed does not support expending party and court resources in the interim.

SF Tech has not identified any particular prejudice it will suffer from a stay. Mere delay in any eventual monetary recovery is not sufficient to require going forward where the threshold issue

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[4] The *Pequignot* court implied some distaste for a statutory scheme that "benefit[s] individuals, such as the plaintiff in the case at bar, who have chosen to research expired or invalid patent markings and to file lawsuits in the hope of financial gain." *Id.* at 728. The court concluded, however, that any abuses in this arena are a matter for Congress, not the courts, to address. *Id.*

[5] The standing issue apparently was not raised in the *Pequignot* appeal. Accordingly, while the Federal Circuit's disposition of *Pequignot* may be instructive for these actions in one or more aspects, it is less likely to include a direct holding disposing of the standing issue one way or the other.

of standing can be conclusively resolved by waiting for the Federal Circuit to rule. Accordingly, the actions remaining in this district will be stayed.

The motions to dismiss for lack of standing will be denied without prejudice. They may be renewed if and when the Federal Circuit issues a decision in *Stauffer* that supports those motions. The motions to dismiss for failure to state a claim will also be denied without prejudice. They may be renewed either in conjunction with any renewed motions challenging standing, or independently, in the event the Federal Circuit's *Stauffer* decision resolves the standing issue in SF Tech's favor.

IV. CONCLUSION

Pursuant to Fed. R. Civ. P. 21, and good cause appearing, this action is hereby severed as to each and every separate defendant.

1. The claims brought by plaintiff against Magnum Research are hereby transferred to the District of Minnesota.

2. The claims brought by plaintiff against Delta Faucet are hereby transferred to the Southern District of Indiana.

3. The claims brought by plaintiff against Graphics Packaging are hereby transferred to the Northern District of Georgia.

4. This case number shall remain captioned San Francisco Technology, Inc. v. Adobe Systems, Inc., but all defendants except Adobe are severed out.

5. The Clerk shall open new case numbers for each of the following, all to be assigned to the undersigned, and shall file a copy of the complaint and this order in each.

a. San Francisco Technology, Inc. v. Brita Products Co.

b. San Francisco Technology, Inc. v. Evans Manufacturing

c. San Francisco Technology, Inc. v. Evercare Co.

d. San Francisco Technology, Inc. v. Pavestone Company LP

e. San Francisco Technology, Inc. v. Procter & Gamble

f. San Francisco Technology, Inc. v. SC Johnson

g. San Francisco Technology, Inc. v. Spectrum Brands, Inc.

h. San Francisco Technology, Inc. v. Super Swim Corp.

i. San Francisco Technology, Inc. v. Unilock, Inc.

j. San Francisco Technology, Inc. v. West Coast Chain Mfg. Co.

6. Each of the actions remaining in this district shall then be stayed, pending a Federal Circuit decision in *Stauffer*, or further order of court.[6] The parties shall promptly notify the Court when (a) argument in *Stauffer* has been scheduled; (b) such argument has been held, and (c) a decision issues. This stay may be lifted on the Court's own motion at any time should it appear that waiting for the Federal Circuit to rule is causing undue delay.

7. The motions to dismiss are denied, without prejudice, as described above.

Dated: 4/13/10

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

[6] The Court notes that defendant SC Johnson answered the complaint rather than moving to dismiss. Because a lack of Article III standing is not waivable, however, the stay will be extended to it as well.

EXHIBIT Q

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES *ex rel.* ALTRACH DATA SOLUTIONS, LLC, Plaintiff, v. THE EVERCARE COMPANY, Defendant.	CIVIL ACTION NO. 1:10-CV-461-CAP

O R D E R

This matter is before the court on a joint motion to stay [Doc. No. 8]. Good cause having been shown, the court ORDERS as follows:

(1) The court adopts the stipulation agreed to between the parties.

(2) The above-captioned action is stayed and administratively closed pending resolution by the Federal Circuit of Stauffer v. Brooks Bros., Inc., Appeal Nos. 2009-1428, 2009-1430, and 2009-1453.

(3) The parties will advise the court of the outcome in Stauffer, at which time the court will lift the stay and reopen the case.

(4) Evercare's responsive pleading to Altrach's complaint shall be due thirty days after the court lifts the stay in this case.

SO ORDERED, this 29th day of April, 2010.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge

EXHIBIT R

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
DENNIS M. CAVANAUGH
JUDGE

THE FRANK R. LAUTENBERG
UNITED STATES POST OFFICE
AND COURTHOUSE BUILDING
NEWARK, NJ 07101
Room No. 451
(973) 645-3574

May 13, 2010

LETTER ORDER

Served via ECF upon all counsel

Re: CRESTRON ELEC., INC. V. LUTRON ELEC. CO., INC.
CIVIL ACTION NO.: 10-01390 (DMC)

Dear Counsel:

The Court writes in response to a request by Lutron Electronics Co., Inc. ("Defendant") to stay this matter pending resolution of two cases before the United States Court of Appeals for the Federal Circuit, Pequignot v. Solo Cup Co., No. 2009-1547 and Stauffer v. Brooks Bros., Inc., Nos. 2009-1428, 1430, 1453.

Crestron Electronics, Inc. ("Plaintiff") filed a complaint in this action, alleging that Defendant improperly marked products with expired patent numbers after the expiration of the patents. See Doc. No. 8, at 2. Based on such conduct, Plaintiff brings a federal claim for false marking of an unpatented article in violation of 35 U.S.C. § 292, as well as three New Jersey state law causes of action. See id.

Defendant urges the Court to stay this matter pending the resolution of the above-mentioned Federal Circuit cases. See Letter of August 23, 2010. In particular, Defendant asserts that the Pequignot case (1) will determine whether Plaintiff may state a claim pursuant to § 292 under the circumstances here, and if so, (2) could potentially modify the burden of proof that Plaintiff must meet in prevailing on its claim. Furthermore, the Stauffer case may have an impact on whether

Plaintiff has standing under § 292—this issue is particularly significant to this case, as the § 292 is Plaintiff's only federal claim. See Doc. Nos. 8 at 3, 11 at 1.

The Court makes the above observations without deciding on any issue in this case. These facts, however, do convince this Court that a stay of limited duration is warranted in this matter.

It is, on this 13th day of May, 2010,

ORDERED that this matter shall be stayed for a period of six (6) months; and it is

FURTHER ORDERED that after six (6) months, the Court, upon request of either party, will reevaluate the propriety of maintaining a stay of this action.

Dennis M. Cavanaugh, U.S.D.J.

cc: Hon. Mark Falk, U.S.M.J.
File

EXHIBIT S

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

United States *ex rel.*	)	
	)	
RALPH M. HUNGERPILLER, SR., Relator	)	
	)	Civil Action Number
Plaintiff,	)	**2:10-cv-290-AKK**
	)	
v.	)	
	)	
ENERGIZER HOLDINGS, INC.,	)	
	)	
Defendant.	)	

ORDER

Before the court is Defendant's Motion to Dismiss, (doc. 11), and Motion to Stay Proceedings, (doc. 13). Both motions are fully briefed and ripe for this court's review. As further explained below, the Motion to Dismiss is DENIED, and the Motion to Stay is GRANTED in part and DENIED in part:

(1) Defendant's Motion to Stay is DENIED as it relates to *Pequignot v. Solo Cup Co.*, Appeal No. 2009-1547, ("*Solo Cup*"), since it presents issues that will impact this case only at the summary judgment stage. As it relates to *Stauffer v. Brooks Bros.*, Appeal Nos. 2009-1428, 2009-1430, 2009-1453 ("*Stauffer*"), the motion is GRANTED. This court finds that the issues presented in *Stauffer* have direct bearing on the resolution of threshold subject matter

jurisdiction issues in this case. Accordingly, this action is hereby stayed until the United States Court of Appeals for the Federal Circuit issues a ruling in *Stauffer*. The court recognizes plaintiff's argument that a court should not grant a stay simply because of a pending appeal that may have some impact on this case and that, in fact, Judge William Conley declined to do so in *Hy Cite Corp. v. Regal Ware, Inc. et. al*, No. 10-cv-168-WMC (W.D. Wisc. May 19, 2010). Doc. 27-1. However, this court adopts and incorporates the reasoning of Judge Richard Seeborg, whom the undersigned knows, on this issue:

> As [plaintiff] points out, it is not the general rule that a stay will be granted simply because some appellate decision is pending that may have some bearing on the case at hand. In this instance, however, a stay pending a decision in the *Stauffer* appeal appears warranted. First, plaintiff cannot complain about a stay if the alternative is that this Court chooses to follow *Stauffer* and dismiss. If the Court declined to follow *Stauffer*, however, it seems inevitable that Federal Circuit will rule before these actions could proceed to judgment. Then, unless the decision is a reversal, dismissal of these actions likely would be required. The possibility that *Stauffer* may very well be reversed does not support expending party and court resources in the interim.

Doc. 23-1 at 6 (*San Francisco Tech., Inc. v. Adobe Sys. Inc., et. al*, No. C 09-6083-RS (N.D. Cal. April 13, 2010) (order granting motion to stay)).

(2) In light of the stay, defendant's Motion to Dismiss is DENIED

without prejudice. Defendant may re-file its motion after the decision in *Stauffer* so that the parties' briefs will reflect *Stauffer* and any other subsequent pertinent decisions.

(3) Defendant shall promptly notify the court when the Federal Circuit (a) schedules argument in *Stauffer*; (b) holds the argument; and (c) issues a decision.

(4) The parties are ordered to submit a revised Rule 26 report no later than thirty (30) days after the Federal Circuit issues the decisions in *Stauffer*.

DONE and ordered this 9th day of June, 2010.

ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE