UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INFINITY HEADWEAR & APPAREL,

Plaintiff,

- against -

JAY FRANCO & SONS, et al.,

Defendants.

OPINION AND ORDER

15-CV-1259 (JPO) (RLE)

THE HONORABLE RONALD L. ELLIS, U.S.M.J.:

On May 3, 2017, Defendants Jay Franco & Sons and Jay At Play (collectively "Jay Franco") filed a letter informing the Court that the Patent Trial and Appeal Board ("PTAB") affirmed its final rejection of Plaintiff Infinity Headwear & Apparel's ("Infinity") claims 1-9 and 18-20 of U.S. Patent No. 8,864,544 on May 1, 2017. (Doc. No. 298.) Jay Franco argues that "all of the claims asserted by Plaintiff against Defendants are now either invalid or cancelled," and renew their request to stay the patent infringement cause of action "at least pending any appeal of the PTAB Decision." *Id.*

On May 8, 2017, Infinity responded to Jay Franco's letter. (Doc. No. 299.) Infinity argues that the *ex parte* PTAB reexamination and the patent infringement litigation are distinct and "may permissibly proceed in parallel and even reach different conclusions." (*Id.* at 2.) Infinity also argues that "the reexamination process remains ongoing"—Infinity intends to appeal the PTAB's May 1, 2017 decision and only after Infinity's appeal is resolved will a reexamination certification be issued and published. *Id.*

The Court has made clear that the PTAB reexamination has no consequence on this case until after a reexamination certificate is issued and published. (Doc. Nos. 187 at 6, 260 at 2.) Infinity's motions for summary judgment are fully briefed and discovery is now closed. (*See*

Doc. Nos. 190-92, 194, 199, 216-18, 233, 257-59, 266-67, 292-93, 296.) At this point in the litigation, a stay is unwarranted. After the resolution of the pending motions, the Honorable J. Paul Oetken will determine if the case is ready to proceed to trial.

IT IS HEREBY ORDERED THAT Jay Franco's request to stay the patent infringement cause of action is **DENIED**.

SO ORDERED this 19th day of June 2017.
New York, New York

The Honorable Ronald L. Ellis
United States Magistrate Judge