# EDVA Denies Stay Pending Patent Reexaminations

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Judge Payne recently denied defendants' motion to stay a patent infringement suit pending reexamination of the patents-in-suit in *ePlus, Inc. v. Lawson Software, Inc.*, No. 3:09cv620 (E.D.Va. March 31, 2010). Plaintiff *ePlus* filed the complaint in May, 2009, against defendants, Perfect Commerce, Inc., Sciquest, Inc., Lawson Software, Inc., and Verian Technologies, Inc. alleging patent infringement claims relating to electronic sourcing systems, which allow prospective buyers to locate items to purchase from multiple electronic catalogs and build a requisition for the items.

The patents at issue were the subject of a previous lawsuit in 2006 against SAP America, Inc. and SAP AG. However, after the trial for that case ended in a hung jury, SAP filed for an *ex parte* reexamination of one of the patents-in-suit. The PTO granted reexamination and rejected 20 claims of the patent as being anticipated by four independent items of prior art. *ePlus'* appeal of the rejection is still pending. Lawson also filed an *inter partes* reexamination request regarding several claims of other patents-in-suit in the current *ePlus* case.

In ruling on the motion, the Court considered the standard set down by *Landis v. N. Am. Co.*, 299 U.S. 248 (1936), and the factors set out in other patent cases relying on *Landis*, to determine: (1) whether discovery was complete and a trial date was scheduled; (2) whether a stay would simplify the matters at issue; and (3) whether a stay would unduly prejudice couror clearly disadvantage the non-moving party.

The Court found that because the parties had completed a substantial amount of discovery and

trial was already set for September, 2010, the first factor weighed against a stay. With respect to the second factor, the Court noted that completion of the reexamination would undoubtedly simplify some of the matters at issue, particularly if there were an effective invalidation of a patent requiring dismissal of the suit or encouraging settlement. Although it would certainly not dispose of all the issues, such as subject matter, indefiniteness, improper inventorship, or inequitable conduct defenses raised in the case, the Court found this factor weighed slightly in favor of a stay.

Finally, the Court found that *ePlus* made a strong showing of prejudice, because of the time it would have to wait to litigate its claims, and the possibility it could lose its right to injunctive relief, because the patents could expire prior to completion of reexamination. Although Lawson argued it would be prejudiced at trial because the patents would be presumed valid without a decision on the reexaminations, the Court found that the advanced stage of the case and Markman proceedings undercut Lawson's arguments. Moreover, the lengthy process of reexamination outweighed the interest of the parties and efficient administration of justice in moving forward with the action.

To see the opinion for the decision above, click here:

http://www.williamsmullen.com/files/upload/ePlus-V-Lawson.pdf

## Related People


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