Matthew B. Lehr (Bar No. 213139)
Anthony I. Fenwick (Bar No. 158667)
Veronica C. Abreu (Bar No. 251002)
David Lisson (Bar No. 250994)
DAVIS POLK & WARDWELL
1600 El Camino Real
Menlo Park, California 94025
Telephone: (650) 752-2000
Facsimile: (650) 752-2111

Attorneys for Defendants ENERGIZER HOLDINGS INC. and EVEREADY BATTERY COMPANY, INC.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff, v. ENERGIZER HOLDINGS INC., a Missouri corporation; EVEREADY BATTERY COMPANY, INC.; and DOES 1-100, Defendants.	Case No.: 07 CV 2321 BTM (CAB) **DEFENDANTS ENERGIZER HOLDINGS INC. and EVEREADY BATTERY COMPANY, INC.'S *EX PARTE* APPLICATION TO CONTINUE EARLY NEUTRAL EVALUATION CONFERENCE**

The Energizer Defendants'[1] motion to stay this case pending the PTO's reexamination of plaintiff's '184 patent[2] has been fully briefed and was taken under submission by Judge Moskowitz on March 14, just a few days ago. Judge Moskowitz has recently stayed three other cases pending the PTO's reexamination of the '184 patent.[3] Nothing salient to the stay issue distinguishes this case from the cases already stayed. Accordingly, the Energizer Defendants expect that Judge Moskowitz will soon issue an order staying this case. Given the pendency of the motion to stay,

[1] For ease of reference, defendants and counterclaimants Energizer Holdings, Inc. and Eveready Batter Company, Inc. are referred to collectively as the "Energizer Defendants."
[2] For ease of reference, U.S. Patent 4,935,184 is referred to as the "'184 patent."
[3] *Sorensen v. Giant Int'l, et al.*, Case No. 07-cv-2121 BTM (CAB), Doc. #28 (S.D. Cal. Feb. 28, 2008); *Sorensen v. Helen of Troy, et al.*, Case No. 07-cv-2278 BTM (CAB), Doc. # 26 (S.D. Cal. Feb. 28, 2008); and *Sorensen v. Black & Decker et al.*, Case No. 06-cv-1572 BTM (CAB), Doc. #243 (S.D. Cal. Sept. 10, 2007).

the Energizer Defendants' expectation that the motion will be granted very soon, and the substantial likelihood that the asserted claim of plaintiff's now expired patent will be invalidated by the PTO as a consequence of the reexamination proceedings, the Energizer Defendants believe that preparation for and conduct of the Early Neutral Evaluation Conference and associated initial case management conference currently scheduled on March 28, 2008 will not be constructive and will in fact result in a wasting of judicial and party resources. The Energizer Defendants therefore respectfully apply, *ex parte*, for an order continuing the ENE conference and initial case management conference, as follows:

(1) should a stay be granted as expected, to a date after the stay is lifted by the Court; or

(2) in the unlikely event a stay is denied, to a date to be determined after Judge Moskowitz rules on the Energizer Defendants' motion to stay.

A continuance of the ENE as outlined above will promote efficiency. It would be unfruitful – and a waste of judicial and party resources – to hold an ENE conference just days before a stay is granted. Conversely, in the unlikely event the court declines to issue a stay, neither party will be prejudiced by a brief continuance of the ENE.

Counsel for the Energizer Defendants notified Plaintiff's counsel of this *ex parte* application on March 19, 2008. Counsel for Plaintiff indicated that Plaintiff will oppose the requested continuance.

Dated: March 19, 2008

Respectfully submitted,

DAVIS POLK & WARDWELL

By: s/ Veronica C. Abreu
Attorney for Defendants ENERGIZER HOLDINGS INC. and EVEREADY BATTERY COMPANY, INC.
Email: veronica.abreu@dpw.com

Matthew B. Lehr (Bar No. 213139)
Anthony I. Fenwick (Bar No. 158667)
Veronica C. Abreu (Bar No. 251002)
David Lisson (Bar No. 250994)
1600 El Camino Real
Menlo Park, California 94025
Telephone: (650) 752-2000
Facsimile: (650) 752-2111