MELODY A. KRAMER, SBN 169984
KRAMER LAW OFFICE, INC.
9930 Mesa Rim Road, Suite 1600
San Diego, California 92121
Telephone (858) 362-3150
mak@kramerlawip.com

J. MICHAEL KALER, SBN 158296
KALER LAW OFFICES
9930 Mesa Rim Road, Suite 200
San Diego, California 92121
Telephone (858) 362-3151
michael@kalerlaw.com

Attorneys for Plaintiff JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

DMS HOLDINGS, INC. d.b.a. MABIS HEALTHCARE and DURO-MED INDUSTRIES, a a Delaware Corporation; and DOES 1 – 100,

Defendants.

and related counterclaims.

Case No. 08cv559 BTM CAB

DECLARATION OF J. MICHAEL KALER

Date: October 17, 2008
Time: 11:00 A.M.
Courtroom: 15, Fifth Floor
Hon. Barry Ted Moskowitz

NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT –

Oral Argument Has Been Respectfully Requested by Plaintiff

I, J. MICHAEL KALER, declare:

1. I am not a party to the present action. I am over the age of eighteen. I have personal knowledge of the facts contained within the following paragraphs, and could and would competently testify thereto if called as a witness in a court of law.

2. At all times relevant herein I have been an attorney for Sorensen Research and Development Trust ("Sorensen"), Plaintiff in the above-captioned matter.

3. This declaration is made in support of Plaintiff's Motion To Delay Ruling On The Court's OSC Why The Case Should Not Be Stayed And Allow Conduct Of Depositions Of Harold Wegner And Dennis Crouch.

4. In July 2007, Black & Decker filed a request for reexamination of U.S. Patent 4,935,184 ("'184 patent"). In December 2007, co-defendants to Black & Decker filed another request for reexamination.

5. We are now in the 14 month since filing with the USPTO, and no office action, the first substantive step in a reexamination proceeding, has issued.

6. On June 25, 2008, well-respected intellectual property blogger Dennis Crouch reported the results of a statistical analysis of USPTO reexamination figures for 2000+ reexamination certificates published since 2000. The copy of a report is attached herein as Exhibit B.

7. On June 26, 2008, Professor Harold Wegner who has testified before Congress regarding patent reforms and is also a partner with Foley & Lardner (counsel for one of the *Black & Decker* case defendants) cited Professor Dennis Crouch's research and added his own blistering critique of the PTO reexamination process. The copy of his email to Melody Kramer is attached herein as Exhibit C.

8. In February 2008, Professor Wegner was also reported in the San Diego Intellectual Property Lawyers Association journal as stating that "today the average ex parte reexamination takes about 5 years (vs. the PTO's claim that it takes 2 years). If an appeal to the CAFC is involved, that extends the period to 7.7 years." The

article from this journal is attached herein as Exhibit D.

9. The Court has indicated that the length of the reexamination is a primary factor in issuing a stay, and that anything beyond 2 years is unacceptable: "if nothing seems likely at the end of two years, then I don't know that I'm going to keep the stay. I mean, I think the odds are that I am not going to keep the stay in place." Relevant pages from August 20, 2008 hearing transcript are attached herein as Exhibit A.

10. On September 4, 2008, I telephoned Teresa Ascencio, counsel for Defendant DMS Holdings Inc., and asked if Defendant would stipulate to the conduct of depositions of Professor Wegner and Professor Crouch. Ms. Ascencio politely declined to stipulate.

I declare that the foregoing is true and correct to the best of my personal knowledge under penalty of perjury of the laws of the State of California and of the United States of America, this Friday, September 05, 2008.

/s/ J. Michael Kaler

J. Michael Kaler, Esq.
Attorney for Plaintiff