IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Civil Action No. 12-cv-02211-WJM-BNB

RANDALL S. ASHER, D.D.S., M.S.,

Plaintiff,

v.

COLGATE-PALMOLIVE COMPANY, a Delaware corporation,

Defendant.

ORDER ADMINISTRATIVELY CLOSING CASE DUE TO FEDERAL CIRCUIT APPEAL IN RELATED ACTION

In this matter Defendant Colgate ("Defendant") has filed Motion to Stay the Proceedings. ("Motion") (ECF No. 36). Plaintiff Asher ("Plaintiff") has filed a Response. (ECF No. 39).[1]

Defendant seeks a stay in this action (*Asher II*) pending final resolution of a Federal Circuit Appeal (Case Number 2013-1043). That appeal arises from an order granted by Judge Marcia S. Krieger of this District Court involving claim construction of U.S. Patent No. 5,735,011 ("011 Patent"). *See Randall S. Asher v. Colgate-Palmolive* Co., D. Colo. Case No. 10-cv-01468-MSK-KMT (*Asher I*). The '011 Patent in *Asher I* and *Asher II* (this action) is the same. The parties have agreed that claim construction performed by the Court in *Asher I* would apply to the '011 Patent in this action, *Asher II.*

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[1] On August 20, 2012, Asher filed this action (*Asher II)* accusing nine Colgate toothbrushes of infringing the '011 Patent. (ECF No. 1 at ¶¶ 11-19.)

(ECF No. 35 at 4-5). The Federal Circuit's *de novo* appellate review, construing the claims in the '011 Patent, will therefore be critical to the disposition of this case.

Based on the above filings—and to avoid the burden on the parties while the Federal Circuit Appeal is pending—the Court finds that administrative closure of this case would be a more appropriate use of scarce judicial resources than proceeding with this action at this time.

Accordingly, the Court ORDERS that the above-captioned action is ADMINISTRATIVELY CLOSED pursuant to D.C.COLO.LCivR 41.2. The parties are GRANTED leave to move to reopen this case upon a showing of good cause once final disposition has been entered in the Federal Circuit Appeal (Case Number 2013-1043).

Dated this 20th day of December, 2012.

BY THE COURT:

William J. Martínez
United States District Judge