UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ARGENTUM MEDICAL, LLC, Plaintiff, v. DAVID J. KAPPOS, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Defendant.	)	Civil Action No. 10-01177 (CKK)

CONSENT MOTION FOR STAY

Defendant, David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("USPTO"), requests that the Court enter an Order staying this action until Judge Sullivan rules on the statute of limitations issue currently before him in Bristol Myers Squibb Co. v. Kappos, 09-cv-1330 and 09-cv-2420. Plaintiff's counsel consents to this motion.

On January 7, 2010, the United States Court of Appeals for the Federal Circuit upheld this Court's decision in Wyeth & Elan Pharma Int'l Ltd. v. Dudas holding that plaintiffs Wyeth and Elan Pharma were entitled to patent-term adjustments under 35 U.S.C. § 154(b) due to the USPTO's delay in prosecuting their patent applications. See Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010). Since the Federal Circuit's decision in Wyeth, several cases have been filed challenging the USPTO's patent-term calculations under 35 U.S.C. § 154(b) and seeking a re-calculation of individual patent-terms in accordance with the Federal

Circuit's decision in Wyeth. Some of the cases seeking re-calculation, however, have raised a statute-of-limitations issue with respect to the ability to receive patent-term relief under 35 U.S.C. § 154(b) after 180 days have lapsed from the grant of the patent . See Bristol-Myers Squibb Co. v. Kappos, 09-cv-1330 ("Bristol-Myers"). The instant case raises that statute of limitations issue, and the parties now move for this Court to stay this matter pending a decision in the Bristol-Myers cases.

On July 2, 2010, the USPTO in Bristol-Myers filed a motion to dismiss for lack of jurisdiction arguing that the 180-day statute-of-limitations period proscribed in 35 U.S.C. § 154(b) applies to patent-term cases seeking recalculation after the Federal Circuit's decision in Wyeth. On July 30, 2010, plaintiffs in Bristol-Myers filed an opposition to the motion to dismiss and a cross-motion for summary judgment arguing that the 35 U.S.C. § 154(b) statute of limitations does not apply to many cases seeking reconsideration of patent terms post-Wyeth. Because the legal issues in the instant case are similar to the ones currently being litigated in Bristol-Myers, the parties now request that the Court stay this matter pending a ruling on the statute-of-limitations issue before the Court in Bristol-Myers. Staying this action until a decision is issued in Bristol-Myers will promote judicial economy and assist in the orderly development of precedent.

A draft order reflecting this relief is attached.

Respectfully submitted,

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ORDER

Upon consideration of defendant's consent motion for a stay of this case, and the record herein, it is hereby:

ORDERED that the motion is GRANTED; and is further

ORDERED that this case is stayed until there is a decision by the Court Bristol Myers Squibb Co. v. Kappos, 09-cv-1330 and 09-cv-2420, and it is further

ORDERED that the parties will file a joint-status report within thirty days after the decision in the Bristol Myes Squibb Co. case, a status report that addresses the further proceedings, if any, that are needed in this case.

UNITED STATES DISTRICT JUDGE