**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| BALDWIN GRAPHIC SYSTEMS, INC., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Civil Action No. 06-077-JJF |
| | ) | |
| FIBERWEB SIMPSONVILLE, INC., and FIBERWEB, INC., | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' MOTION TO STAY THIS ACTION**

Defendants move to modify the stay order entered July 19th 2007 ("the Order") in this action (D.I. 54). The Order stayed this case pending the decision by the United States Court of Appeals for the Federal Circuit in *Baldwin Graphic Systems, Inc. v. Siebert, Inc.*, 07-1262 (Fed. Cir.). The Court conditioned the Order upon the entry of a parallel stay in *Fiberweb PLC v. Baldwin Graphic Systems, Inc.*, No. HC-07-C (United Kingdom High Court of Justice, Chancery Div.) ("the UK action"). Fiberweb hereby requests that the Court remove this condition because it was for Baldwin's benefit and Baldwin has rejected it.

The Court explained during the hearing on this matter that a parallel stay in the UK action was appropriate because of Baldwin's argument that Fiberweb was "going to gain an advantage because of what you're doing in the United Kingdom." Transcript (Exhibit A hereto), p. 3, lines 15-16. The Court also noted that Baldwin's "argument about business competition [was] compelling." Transcript, p. 4, lines 2-3. Accordingly, this Court asked Fiberweb if it were

willing to stay the UK action. *See* Transcript, p. 2, lines 18-19; p. 3, lines 18-20; and p. 5, lines 4-6. Fiberweb agreed, pending client approval. Transcript p. 11, lines 6-8.

Thereafter, Fiberweb took steps to obtain a stay in the UK action. On July 24, 2007, Fiberweb's U.K. counsel sent a draft consent order to stay the UK action to Baldwin's U.K. counsel. *See* Halford-Harrison declaration and Ex. RHH-1. After almost a month's time, Baldwin rejected Fiberweb's proposal and declined to consent to a stay in the UK action. *See* Halford-Harrison declaration and Ex. RHH-2. Fiberweb has, consistent with its representations to this Court, done what it could to effect a stay in the UK action, but Baldwin has frustrated those efforts. Fiberweb cannot proceed alone in seeking a stay without risking sanctions. *See* Halford-Harrison declaration (making an application in the U.K. Courts without proper grounds or Baldwin's participation could subject Fiberweb to Rule 11 type sanctions).

The proposed stay in the UK action was solely for the benefit and protection of Baldwin. Fiberweb has taken all reasonable steps to obtain such. By constrast, Baldwin has delayed and ultimately rebuked Fiberweb's efforts. Because Baldwin does not want the stay, and because it was solely for Baldwin's protection, Fiberweb submits that a stay in the UK action should no longer be a prerequisite for staying this action. Accordingly, Fiberweb respectfully requests that the this Court grant a stay in this case pending the decision by the United States Court of Appeals for the Federal Circuit in *Baldwin Graphic Systems, Inc. v. Siebert, Inc.*, 07-1262 (Fed. Cir.) without condition. A proposed form of Order is submitted herewith.

Date: August 28, 2007

Respectfully submitted,

**CONNOLLY BOVE LODGE & HUTZ, LLP**

/s/ Francis DiGiovanni
Francis DiGiovanni (#3189)
The Nemours Building
1007 North Orange Street
P.O. Box 2207
Wilmington, Delaware 19899-2207
Telephone: 302-888-6316
Facsimile: 302-658-5614
fdigiovanni@cblh.com

Of Counsel:

Michael E. Zeliger
Christopher Centurelli
Jackson Ho
**KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP**
State Street Financial Center
One Lincoln Street
Boston, MA 02111-2950
Telephone: (617) 261-3100

**CERTIFICATE OF CONFERENCE**

I certify that counsel for the defendants conferred by telephone with counsel for plaintiff on Tuesday August 21, 2007, regarding the relief sought in this Motion. Despite these efforts, the parties were unable to resolve the issues presented by this Motion. Accordingly, this Motion is presented to the Court for determination.

/s/ Francis DiGiovanni
Francis DiGiovanni (#3189)

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COPY

BALDWIN, )
)
Plaintiff, )
) C.A. No. 06-077
v. )
)
FIBERWEB, et al., )
)
Defendant. )

Friday, July 13, 2007
10:23 a.m.
Courtroom 4B

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.
United States District Court Judge

APPEARANCES:

MORRIS, NICHOLS, ARSHT & TUNNELL
BY: JULIE HEANEY, ESQ.

-and-

MORGAN FINNEGAN
BY: JAMES GOULD, ESQ.

Counsel for the Plaintiff

CONNOLLY, BOVE, LODGE & HUTZ
BY: FRANK DiGIOVANNI, ESQ.

-and-

K & L GATES
BY: MICHAEL ZELIGER, ESQ.

Counsel for the Defendant

THE COURT: All right. Baldwin and Fiberweb.

MR. GOULD: Good morning, James Gould of Morgan & Finnegan for plaintiff, Baldwin.

MS. HEANEY: And Julie Heaney, Your Honor.

THE COURT: Good morning.

MR. Di GIOVANNI: Your Honor, Frank DiGiovanni from Connolly Bove on behalf of defendants Fiberweb.

Michael Zeliger of K & L Gates on behalf of the defendants, Fiberweb.

THE COURT: All right. Welcome and sit. You can have a seat. I'm going to start with the defendant.

So you think this case ought to be stayed. And are you willing to stay the United Kingdom action by your parent, sort of a mutual stay until the Federal Circuit works out the, what is it, Sebert or Seibert case?

MR. GOULD: Seibert case, Your Honor.

MR. ZELIGER: I'm thinking about

that, Your Honor. Not something we had contemplated prior to today. I'm thinking whether I have the authority to do that.

I have no objection to do that or recommend it. So I'll go out on a limb and say yes.

THE COURT: Well, see, the most compelling argument from your friend on the other side is that this is all about competitors. And they're not too concerned about being hung up on the Illinois claim construction or whatever gets worked out in the Federal Circuit.

What they don't like is the fact, and from what I can glean from their papers, is that you're going to gain an advantage because of what you're doing in the United Kingdom. Because they think your product infringes.

But if you stay the United Kingdom action, I'd be more than willing to stay this action. And we will wait to see what the Federal Circuit does, and we'll have a better background to then move this case along.

You can move the United Kingdom case along. If you don't want to stay the United

Kingdom case, then I've got to let them move along here, because I think their argument about business competition is compelling.

MR. ZELIGER: Let me --

THE COURT: Is your --

MR. ZELIGER: We'll agree to the stay if that's what the Court suggests, but I understood their argument to be a little different.

THE COURT: No. No.

Let me say this. I don't like to talk about settlement, and I don't like to talk about stays. I like to talk about getting to trial. I like going to trial.

MR. ZELIGER: Mm-hmm.

THE COURT: I'm not encouraging you to stay. What I'm saying to you is if you don't stay that action, then you're not going to get a stay against them. You're going to have at each other.

They'll have at you here and you'll have at them wherever else you have at them. But don't think that I'm encouraging you to stay.

That's what you've asked for in this

case, and I'm just saying parity would seem to me, based on what I perceive, is what I understand to be their situation competitively vis-a-vis your client is that for you to get a stay, you have to agree to a stay, kind of like a status quo until we see what the Federal Circuit does.

MR. ZELIGER: Very well. I understand the Court's decision.

Let me respond, please. We understood their argument to be a stay in this case would be unfair, because that would allow activities to continue to occur overseas.

Our action overseas is actually akin to a declaration judgment action. So while we will agree to stay that action, I'm not sure that responds to their concern.

Their concern is you will be -- if there's a stay in the present action, you'll be able to continue to manufacture your materials here in the United States for sale overseas.

And our response had been litigate overseas if you wish. If you wish to enforce your intellectual property rights in the U.K.,

proceed.

So we would be willing to proceed while this case is stayed. And I think that would respond to their concerns.

THE COURT: If you're manufacturing here and selling an infringing product over there, the stay -- I mean, that's a damages issue.

MR. ZELIGER: Indeed.

THE COURT: That doesn't really hurt them.

MR. ZELIGER: Indeed. That's our response.

But if they think --

THE COURT: That's what I understood.

MR. ZELIGER: If they think the same products are also covered by their U.K. patents which are unaffected by the Federal Circuit appeal, we're willing to proceed there as well. And if they have enforceable rights in the U.K. that can cut off what they perceive is infringement in the U.K., then we can continue.

But we're willing to stay. We do

request a stay here for the reasons briefed because of the efficiencies, but -- and I'll let Mr. Gould respond, because perhaps -- maybe he has different thoughts on a mutual stay.

MR. GOULD: Well, Your Honor, it should be parallel. We're involved in negotiations, in fact, under protective orders on both sides of the pond, so that counsel in the U.K. case and counsel in the U.S. will get the benefit of discovery in both.

And we'd like to go forward with that. So especially there it makes no sense to stay here and let the U.K. case go forward. We're trying to make the same thing.

The claims may be different, but the facts are the same. It's the identical product made in the same plant by the same process, same specs.

So I would agree, you don't have one or the other. If they stayed both, I can talk to my clients, but that would make sense. We'd prefer that they both just go forward.

THE COURT: Well, I understood that, but that you'd rather both go forward?

MR. GOULD: Yes.

THE COURT: But I'm dealing with their application.

MR. GOULD: Sure. As far as efficiency, Your Honor, I just would point out I've been looking at their case, been doing more checking.

Usually when you have this kind of a stay -- they stated the Rambus case, for example. There really wasn't a stay on discovery there, though.

It seems to me the best they can argue is the Federal Circuit decision may have an impact on this Court's Markman. It may.

Not all the issues, all the claim terms and issues. There probably will be others that we will still have to have a Markman on. But that just means delay a little bit.

The Markman ruling, I see no reason to stop the fact discovery going forward with the existing schedule which anticipated fact discovery prior to the Markman in the first place.

So that's the only thing that I

would agree makes some sense.

THE COURT: And the Rambus case with that 2002 stay --

MR. GOULD: Yes.

THE COURT: -- has swollen beyond control. The stay may have been initially helpful, but if you look at that docket and look at the docket in Virginia and California, and actually it probably didn't help the case much.

MR. GOULD: I --

THE COURT: I'm a little bit familiar, because somehow I initially inherited the Rambus case. And to complicate my life, I'm having a case sitting in the Federal Circuit. That's one of the cases. One of those cases is on the docket for appeal.

So I've really looked at that case, particularly in the context of the stays. You know, hindsight is 20-20. Everybody should have just barreled ahead.

MR. GOULD: That would be our view.

THE COURT: I understand that, and I don't disagree with that view, again, because I like to get to trial and keep these cases moving.

MR. GOULD: Yes.

THE COURT: But in this case, I'm dealing with their application for a stay.

MR. GOULD: Yes.

THE COURT: If they want to stay, they're going to have to stay all the action in the action in the U.K. with the declaration judgment. If they don't do that -- so the order would be the motion is granted conditioned on entering into a stay in the United Kingdom action.

If they choose not to do that, then the application is denied, and we just move ahead.

MR. GOULD: Right.

THE COURT: And if they do that, and the stay would only be until the Federal Circuit rules.

MR. ZELIGER: That's all we need.

MR. GOULD: Yeah.

THE COURT: That will open both cases up and have at each other.

MR. ZELIGER: That was the limit of our request.

THE COURT: Yeah. That's what I understood.

Okay. Any questions about that?

MR. ZELIGER: Very well. None,

MR. GOULD: None.

THE COURT: You will have to get client authority, I understand.

MR. ZELIGER: Yes.

THE COURT: I'll enter my order that it's conditioned. If you don't indicate that you're going to stay the United Kingdom action, then the motion is denied. And then you can just engage each other in continuing discovery.

MR. ZELIGER: Okay, Your Honor. Just request one additional question on one issue.

I'm not sure how mechanically that works in the U.K. We may need to come back and explain that, what the circumstances are or what the procedures are associated with seeking a stay in the U.K. But we will report back that we are willing to or not --

THE COURT: Sure.

MR. ZELIGER: -- very promptly.

THE COURT: Today's motion is granted on the condition of the United Kingdom stay. Denied if there's no United Kingdom stay.

If you need to come back to me, I'll be here.

MR. ZELIGER: Very well. Thank you, Your Honor.

MR. GOULD: Very clear. Thank you, Your Honor.

THE COURT: Thank you.

Ms. Heaney or Mr. DiGiovanni, would you submit an order summing up what I have ruled here today, so we get something on the docket that's in writing?

MS. HEANEY: Yes.

(Court was recessed at 10:32 a.m.)

State of Delaware )
)
New Castle County )

CERTIFICATE OF REPORTER

I, Heather M. Triozzi, Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public, do hereby certify that the foregoing record, Pages 1 to 13 inclusive, is a true and accurate transcript of my stenographic notes taken on July 13, 2007, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of July, 2007, at Wilmington.

Heather M. Triozzi, RPR, CSR
Cert. No. 184-PS

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
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| BALDWIN GRAPHIC SYSTEMS, INC., Plaintiff, | ) | |
| v. | ) | Civil Action No. 06-077-JJF |
| FIBERWEB SIMPSONVILLE, INC., and FIBERWEB, INC., Defendants. | ) | |

**ORDER STAYING CASE**

WHEREAS, defendants Fiberweb Simpsonville, Inc. and Fiberweb, Inc. (collectively, "Fiberweb"), moved to stay this case pending the decision by the United States Court of Appeals for the Federal Circuit in *Baldwin Graphic Systems, Inc. v. Siebert, Inc.*, 07-1262 (Fed. Cir.) (D.I. 44), and the parties fully briefed said motion;

WHEREAS, on July 13, 2007, the Court heard argument thereon;

WHEREAS, on July 19, 2007, the Court subsequently entered a stay of this case that was conditioned upon a stay of a related UK action (D.I. 54);

WHEREAS Fiberweb subsequently moved to remove the condition set forth in the original stay, and the Court subsequently heard argument regarding modification of the stay;

IT IS SO ORDERED, this _____ day of _____, 2007, that Fiberweb's second motion to stay is GRANTED, and this case is stayed pending the decision by the United States Court of Appeals for the Federal Circuit in *Baldwin Graphic Systems, Inc. v. Siebert, Inc.*, 07-1262 (Fed. Cir.). Upon issuance of the decision by the Federal Circuit on appeal no. 07-1262, counsel shall jointly contact the Court to request a teleconference for the purpose of preparing an amended scheduling order in this case.

_____
Joseph J. Farnan, Jr.
United States District Judge

**CERTIFICATE OF SERVICE**

I, Francis DiGiovanni, Esq., hereby certify that on August 28, 2007 copies of the foregoing **DEFENDANTS' MOTION TO STAY THIS ACTION** were caused to be served upon the following:

**BY HAND DELIVERY**

Jack Blumenfeld, Esquire
Morris, Nichols, Arsht & Tunnell
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

**BY FACSIMILE AND FEDERAL EXPRESS**

Keith J. McWha, Esquire
Morgan & Finnegan
3 World Financial Center
New York, New York 10281-2101

/s/ Francis DiGiovanni
Francis DiGiovanni (#3189)