IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

U.S. PHILIPS CORPORATION, Plaintiff, v. EASTMAN KODAK COMPANY, Defendant.	Civil Action No. 06-251 (GMS)

DECLARATION OF MEGAN E. MCCARTHY IN SUPPORT OF DEFENDANT EASTMAN KODAK COMPANY'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO STAY LITIGATION OF U.S. PATENT NO. 4,901,075 PENDING COMPLETION OF PATENT REEXAMINATION

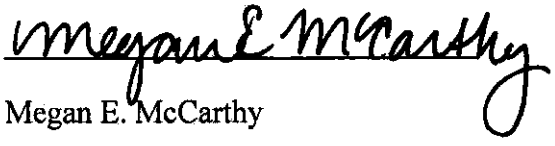
I, Megan E. McCarthy, declare as follows:

1. I am an associate with the law firm DLA Piper US LLP, attorneys of record for defendant Eastman Kodak Company ("Kodak") in the above matter. Unless the context indicates otherwise, I make this declaration based upon my own personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of the transcript from the February 25, 2008 teleconference proceedings before the Honorable Gregory M. Sleet.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Dated March 4, 2008, in San Diego, California.



Megan E. McCarthy

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

U.S. PHILIPS CORPORATION, : Civil Action
:
Plaintiff, :
:
v. :
:
EASTMAN KODAK COMPANY, :
:
Defendant. : No. 06-251-GMS

- - -

Wilmington, Delaware
Monday, February 25, 2008
11:00 a.m.
Teleconference

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge

APPEARANCES:

STEVEN J. BALICK, ESQ.
Ashby & Geddes
-and-
STEVEN M. ANZALONE, ESQ., and
KENNETH M. FRANKEL, ESQ.
Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
(Washington, D.C.)

Counsel for Plaintiff

JAMES HEISMAN, ESQ.
Connolly Bove Lodge & Hutz LLP
-and-
RICHARD T. MULLOY, ESQ., and
T. JESSE HINDMAN, ESQ.
DLA PIPER US LLP
(San Diego, CA)

Counsel for Defendant

MR. MULLOY: Thank you, Your Honor.

THE COURT: Scope of summary judgment letters, I am not sure exactly what that means. Philips, I think, has withdrawn its request to file summary judgment on certain affirmative defenses, I believe. Was there a counterclaim?

MR. ANZALONE: Your Honor, let me kind of explain the situation here. It's a little confused.

Originally, when we met with you at the original conference, initial scheduling conference, we had proposed, jointly proposed a schedule with a Markman hearing. And the Court shortened the schedule, but kept the Markman date. And as a result, our date for filing summary judgment letters was fairly early in the process. And Philips filed the letter. Kodak did not.

We had a hearing before Your Honor where Your Honor asked why are we doing this now. And I basically indicated I did agree with Kodak that I did think it was premature but it was what your order required. And I basically said I would be happy to, you know, have us supplement later after the Markman decision. I said we would have no objection to that. That would make more efficient use of our time.

In fairness to the Court, what you also said is it should be based upon things that change since the Markman decision.

Since that time, since a lot of time has passed, and discovery is closed, I think it would be convenient -- and I haven't been able to reach agreement with Kodak on this point -- to basically allow Philips and Kodak, if it seeks, to put in the request for summary judgment letter some fairly straightforward issues, which I agree were not affected by the Markman decision.

In particular, in our original letter, Your Honor, we tried to strike all of their equitable defenses. Later on we said, well, there is some disputed issues of fact. We are not going to be able to do that.

What we would like to put in this letter, and it is outside what the Court authorized us to do, which is why I am going to the Court, to make sure I can get permission to do this, what I would like to do is point out that all of the state law claims that Kodak is raising are barred by the statute of limitations and that it's a straightforward issue which only requires a calendar and counting on the fingers of one hand up to three.

That is clearly not something you authorized me to do, because it is not affected by the Markman. But I think it is a fairly straightforward issue. I would like to put it in the letter. Kodak can respond to my letter. If the Court agrees and it's kicked out of the case, it will simplify issues greatly.

MR. MULLOY: Your Honor, Kodak could get its motion on file next week.

One issue, Your Honor, I did want to raise with the Court, I don't know if the Court is aware or not, but we have filed a motion to stay this case pending reexamination of the '075 patent.

THE COURT: I wasn't aware of that.

MR. MULLOY: I don't know if the Court would want to consider ruling on that motion before accepting summary judgment briefing. We will proceed at the Court's pleasure.

THE COURT: I think I would. Has that been fully briefed?

MR. ANZALONE: Your Honor, we have not had an opportunity to respond to that motion yet. We, of course, will.

MR. MULLOY: I believe the briefing is set to be completed next week, Your Honor.

THE COURT: That's probably why I don't know about it. It's going to make sense to postpone this conversation at least until I have had a chance to preliminarily examine the briefing. And then I will get back to you.

MR. ANZALONE: Your Honor, let me clarify in view of what Mr. Mulloy said. I certainly don't have an

objection to what Mr. Mulloy was proposing to put in his summary judgment letter, assuming it is a letter. There were other things I was going to put in that letter which I also believe are Markman-related, such as Section 112, Paragraph 2, they are defenses now in view of your ruling on the Markman issues.

I wanted to make clear that the reason I raised the statute of limitations and wanted to have a conference with the Court, I just wanted to let the Court know, that was clearly not within the context of what you indicated would be allowed before.

THE COURT: Sure. Well, the fact that a motion to stay has been filed is a revelation, one that I think warrants a postponement of this discussion, at least a brief postponement, at least -- when is the answer due?

MR. ANZALONE: Tomorrow, Your Honor.

THE COURT: I will be able to pull those two briefs and then your reply, and I will consider it when it comes in, and at least form some preliminary view, and if I feel it wise to get back on the phone with you regarding summary judgment.

MR. MULLOY: Thank you, Your Honor.

THE COURT: All right, counsel. Take care.

(Conference concluded at 11:40 a.m.)

Reporter: Kevin Maurer

CERTIFICATE OF SERVICE

I, Francis DiGiovanni, hereby certify that on March 4, 2008, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to registered counsel of record via e-mail.

I hereby further certify that on March 4, 2008, I caused a copy of the foregoing document to be served on the following counsel of record by the manner so indicated:

BY E-MAIL AND HAND DELIVERY
Steven J. Balick
John G. Day
Tiffany Geyer Lydon
Ashby & Geddes
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899

BY E-MAIL AND U.S. MAIL
Thomas W. Winland
Steven M. Anzalone
Frank A. DeCosta, III
Joyce Craig
Finnegan Henderson Farabow Garrett and Dunner LLP
901 New York Avenue, NW
Washington, DC 20001

/s/ Francis DiGiovanni
Francis DiGiovanni (#3189)