UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FREEDOM SCIENTIFIC, INC., a Delaware corporation,	)	
Plaintiff,	)	
	)	CASE NO.:
vs.	)	8:11-cv-01194-EAK-AEP
ENHANCED VISION SYSTEMS, INC., a California corporation,	)	
Defendant.	)	

PLAINTIFF, FREEDOM SCIENTIFIC INC.'S MOTION TO REOPEN LITIGATION AND INCORPORATED MEMORANDUM OF LAW

Pursuant to this Court's Order Staying this litigation [Dkt. 22], Plaintiff, Freedom Scientific, Inc. ("Freedom"), moves to reopen this case to active status and issue a scheduling order and pretrial order. In support of this motion, Freedom states as follows.

I. Background

This litigation concerns U.S. Patent 7,929,013 (the "'013 Patent"). On May 31, 2011, Freedom filed a Complaint against Defendant, Enhanced Vision Systems, Inc. ("EVS"), for Patent Infringement. EVS filed its answer, defenses, and counterclaim on September 6, 2011, to which Freedom replied and answered on September 26, 2011. The Court entered a Case Management and Scheduling Order [Dkt. 14] and Pretrial Order [Dkt. 15] on October 18, 2011, setting the pre-trial deadlines and trial date.

However, on October 25, 2011, EVS requested an *ex parte* reexamination of the '013 Patent before the U.S. Patent and Trademark Office. As a result, on November 7, 2011, EVS moved to stay the case pending the reexamination [Dkt. 16]. On EVS' motion and over

Freedom's objection, the Court entered its Order on January 31, 2012, staying the present litigation to allow the reexamination of the '013 Patent to run its course. The January 31, 2012 Order directed the parties to move to reopen the case upon resolution of the reexamination.

On April 30, 2012, the USPTO issued a Final Rejection as to Claims 1–8 and 10 and objection to Claim 9 of the '013 Patent. Freedom appealed the Final Rejection pursuant to a Notice of Appeal filed on June 29, 2012. Freedom filed its appellate brief with the Board of Patent Appeals and Interferences on August 29, 2012. On September 17, 2013, the USPTO issued a Reexamination Certificate, which confirms the patentability of all claims (Claims 1-10) of the '013 Patent.

II. Memorandum of Law

The Reexamination Certificate finally concludes the reexamination proceedings. *See In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002) ("A reexamination is complete upon the statutorily mandated issuance of a reexamination certificate.") (citing 35 U.S.C. § 307(a)); *see also* 37 C.F.R. § 1.570(a) ("To conclude an *ex parte* reexamination proceeding, the Director will issue and publish an *ex parte* reexamination certificate in accordance with 35 U.S.C. 307 …"). Therefore, reexamination is concluded and the case is ready to proceed to trial.

"When circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate, the court may lift the stay." *Canady v. Erbe Electromedizin GMBH*, 271 F. Supp. 2d 64, 74 (D. D.C. 2002) (*citing Purolite Int'l. Ltd. v. Rohm & Hass Co.*, 24 U.S.P.Q.2d 1857 (E.D. Pa. 1992). Based on the Reexamination Certificate, the circumstances justifying the stay in this litigation have changed and there is no reasonable basis upon which to continue the stay.

III. Conclusion

Accordingly, Plaintiff requests the Court reopen the present litigation and issue a scheduling order and pretrial order setting the pretrial deadlines and trial of the action.

L.R. 3.01(g) Certification

Undersigned counsel has conferred with counsel for EVS regarding the relief requested herein and counsel for EVS has neither opposed nor agreed to the requested relief.

Date: October 8, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on October 8, 2013 a true and correct copy of the foregoing was filed via cm/ecf to all counsel of record

/s/ Michael J. Colitz, III
Michael J. Colitz, III

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