UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

BRAINTREE LABORATORIES, INC.,

Plaintiff,

v. Case No: 3:13-cv-389-J-32MCR

GATOR PHARMACEUTICALS, INC. and KVK-TECH, INC.,

Defendants.

O R D E R

This patent infringement case is before the Court on Plaintiff Braintree Laboratories, Inc.'s Motion to Dismiss Defendants' Second Counterclaim (Doc. 30) and Defendants Gator Pharmaceuticals, Inc. and KVK-TECH, Inc.'s Amended Joint Motion to Stay (Doc. 36).

In the motion to dismiss, Braintree argues that the defendants' second counterclaim for misuse of the patent is improper and should be dismissed. (Doc. 30.) In response, the defendants agree to dismiss the counterclaim, but the parties cannot agree whether dismissal should be with or without prejudice. (Doc. 32.)

At the same time, the defendants urge in their motion to stay that the Court should stay all proceedings until the Court of Appeals for the Federal Circuit issues an opinion in the appeal of a related case, Braintree Laboratories, Inc. v. Novel Laboratories, Inc., No. 2013-1438. (Doc. 36.) Braintree opposes a stay largely because it believes a stay may allow the defendants to bring their allegedly infringing

generic product to market before this case is resolved. (Doc. 37.)

On February 14, 2014, the Court held a preliminary pretrial conference and hearing on all these matters. (See Doc. 45.) Upon review of the parties' written submissions and oral arguments, the Court finds that, for the reasons stated on the record at the hearing, which are incorporated herein, Braintree's motion to dismiss is due to be granted to the extent that the defendants' counterclaim for misuse should be dismissed without prejudice.[1]

The Court also finds that judicial economy supports entry of a limited stay. The parties are advised, however, that the Court anticipates entering a scheduling order upon lifting the stay that would bring the case to trial before September 2015.

Accordingly, it is hereby **ORDERED**:

1. Braintree's Motion to Dismiss Defendants' Second Counterclaim (Doc. 30) is **GRANTED in part** and **DENIED in part**. The Second Counterclaim in Defendants Gator Pharmaceutical, Inc. and KVK-TECH, Inc.'s Answer and Counterclaims (Doc. 17) is **DISMISSED without prejudice**.

2. The defendants' Amended Joint Motion to Stay (Doc. 36) is **GRANTED**. The case is **STAYED** and administratively closed until the earlier of **June 1, 2014** or the issuance of an opinion by the Court of Appeals for the Federal Circuit in Braintree Laboratories, Inc. v. Novel Laboratories, Inc., No. 2013-1438. The parties shall promptly notify the Court of the issuance of an opinion. The parties are further

[1] The Court takes no position on the merits of the defendants' misuse affirmative defense until they are properly before it.

directed to meet and confer and, by the earlier of **June 1, 2014** or fourteen days after the issuance of an opinion, to submit a revised Case Management Report consistent with a trial date before September 2015.

DONE AND ORDERED at Jacksonville, Florida this 19th day of February, 2014.

TIMOTHY J. CORRIGAN
United States District Judge

bjb.
Copies:

Counsel of Record