

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**THE OHIO WILLOW  
WOOD COMPANY,**

**Plaintiff,**

**v.**

**DAW INDUSTRIES, INC.,**

**Defendant.**

**Case No. 2:04-cv-1222**

**Case No. 2:05-cv-1038**

**JUDGE GREGORY L. FROST**

**Magistrate Judge Norah McCann King**

**THE OHIO WILLOW  
WOOD COMPANY,**

**Plaintiff,**

**v.**

**ALPS SOUTH CORPORATION,**

**Defendant.**

**Case No. 2:04-cv-1223**

**JUDGE GREGORY L. FROST**

**Magistrate Judge Mark R. Abel**

**OPINION AND ORDER**

This matter is before the Court for consideration of Plaintiff The Ohio Willow Wood Company's ("OWW") Motion for Relief from Stay (ECF No. 60 in Case No. 2:04-cv-1222; ECF No. 112 in Case No. 2:04-cv-1223; ECF No. 45 in Case No. 2:05-cv-1038) and Alps South Corporation's ("ALPS") Memorandum in Opposition to OWW's Motion for Relief from Stay (ECF No. 114 in Case No. 2:04-1223). This Opinion and Order also memorializes the status conference held in these cases on November 2, 2011.

## I. Background

On December 27, 2004, OWW filed an action, Case Number 2:04-cv-1223, against ALPS. OWW alleges infringement of its patent entitled “Gel and Cushioning Devices” and numbered U.S. Patent No. 5,830,237 (“the ’237 patent”) and of OWW’s patent entitled “Open-Ended Polymeric Annular Sleeve” and numbered U.S. Patent No. 6,406,499 (“the ’499 patent”).

On December 27, 2004, OWW also commenced suit against DAW Industries, Inc. (“DAW”), Case Number 2:04-cv-1222. In that action, OWW alleges infringement of the ’237 patent. The Court subsequently consolidated that action with another action OWW filed against DAW, Case Number 2:05-cv-1038, in which OWW claims infringement of its patent entitled “Tube Sock-Shaped Covering” and numbered U.S. Patent No. 6,964,688 (“the ’688 patent”).

All three of these cases were previously stayed by this Court pending reexamination by the United States Patent and Trademark Office (“PTO”). OWW, by its motions requesting relief from the stay in the action filed against ALPS and the consolidated actions filed against DAW, informs the Court that the Board of Patent Appeals and Interferences has upheld the validity of the ’237 and the ’688 patents. OWW now requests that the Court lift the stay in these actions.

On November 2, 2011, this Court held a status conference in these actions. All parties were represented at that conference.

## II. Standard

“Courts have inherent power to manage their dockets and stay proceedings, including the authority to order a stay pending conclusion of a PTO reexamination.” *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988) (citing *Landis v. North American Co.*, 299 U.S. 248

(1936); *Gould v. Control Laser Corp.*, 705 F.2d 1340, 1342 (Fed. Cir. 1983)). “ ‘The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’ ” *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n.6 (1998) (quoting *Landis*, 299 U.S. at 254-55). “ ‘Logically, the same court that imposes a stay of litigation has the inherent power and discretion to lift the stay.’ ” *Lincoln Elec. Co. v. Miller Elec. Mfg. Co.*, No. 1:06cv2981, 2011 U.S. Dist. LEXIS 27578, at \*5 (N.D. Ohio Mar. 17, 2011) (quoting *Canady v. Erbe Elektromedizin GmbH*, 271 F. Supp.2d 64, 74 (D. D.C. 2002)).

### **III. Discussion**

Two of these cases have been pending before this Court for seven years and the third case has been pending for six years. The Board of Patent Appeals and Interferences has upheld the validity of the '237 and the '688 patents. The parties indicated at the November 2, 2011 status conference that the life of the patents is nearing extinction. The Court concludes that justice requires the lifting of the stay in this action.

At the status conference, the Court informed that parties that it was inclined to lift the stay and to proceed to trial first on the action filed against ALPS and then on the consolidated actions filed against DAW. OWW and ALPS requested, and this Court granted, seven days to submit a proposed scheduling order for proceeding to trial. After the Court reviews that proposed order and issues a scheduling order with regard to Case Number 2:04-cv-1223, it will then issue a scheduling order on the consolidated cases filed against DAW. OWW and DAW should confer and inform the Court as soon as possible of any circumstances in their litigation that would necessitate a different approach than that offered by OWW and ALPS in their

proposed schedule.

#### **IV. Conclusion**

For the foregoing reasons, the Court **GRANTS** OWW's Motion for Relief from Stay. (ECF No. 60 in Case No. 2:04-cv-1222; ECF No. 112 in Case No. 2:04-cv-1223; ECF No. 45 in Case No. 2:05-cv-1038.) The Clerk is **DIRECTED** to **VACATE** the stay imposed in each action. Counsel for OWW and ALPS are **DIRECTED** to file a proposed scheduling order on or before November 9, 2011.

**IT IS SO ORDERED.**

/s/ Gregory L. Frost  
**GREGORY L. FROST**  
**UNITED STATES DISTRICT JUDGE**