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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 WRE-HOL LLC,

11 Plaintiff,

12 v.

13 PHAROS SCIENCE & APPLICATIONS,
14 INC., et al.,

15 Defendants.

CASE NO. C09-1642MJP

ORDER DENYING MOTION TO
LIFT STAY

16 This matter comes before the Court on Plaintiff's motion to lift the stay. (Dkt. No. 130.)
17 Having reviewed the motion, the responses (Dkt. Nos. 134, 146), the reply (Dkt. No. 138), and
18 all related papers, the Court DENIES the motion.

19 The Court issued a stay of this case pending inter partes reexamination of the patent at
20 issue in this litigation. (Dkt. No. 111.) Plaintiff now claims that the inter partes reexamination is
21 nearly complete and that the stay should be lifted. Defendants point out that the process is not
22 complete at an administrative level and that either party to the reexamination can appeal the
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1 office action that has issued. Defendant TelNav has stated that it will appeal the office action
2 that invalidated a large number of claims in the patent at issue. (Dkt. No. 136 at 6.)

3 The court has the authority to decide whether to order a stay pending the outcome of a
4 reexamination proceeding. Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988). To
5 determine whether to grant a stay pending reexamination by the U.S. Patent and Trademark
6 Office, courts generally consider three factors: “(1) whether a stay will simplify the issues in
7 question and the trial of the case; (2) whether discovery is complete and whether a trial date has
8 been set; and (3) whether a stay will unduly prejudice or present a clear tactical disadvantage to
9 the non-moving party.” Implicit Networks, Inc. v. Advanced Micro Devices, Inc., No. 08-
10 184JLR, 2009 WL 357902, at *2 (W.D. Wash. Feb. 9, 2009.)

11 Contrary to Plaintiffs’ argument, the reexamination process is not in its final throes, and
12 none of the factors at issue weigh in favor of lifting the stay. In granting the stay, the Court
13 found that the reexamination process was likely to simplify the case and there was no evidence
14 of prejudice. (Dkt. No. 111 at 3.) As Defendants have explained, the reexamination process is
15 not final, and Defendant TelNav intends to appeal any decision that does not eliminate all of the
16 claims. Given the fact that the reexamination is not final, the Court does not find that lifting the
17 stay now would be prudent. As other courts have done, the Court will await the exhaustion of
18 the entire reexamination proceedings to lift the stay. See Like.com v. Superfish, Inc., Case No.
19 09-cv-5805-SB, 2010 U.S. Dist. LEXIS 70458, at *9 (N.D. Cal. June 30, 2010). Doing so will
20 ensure that the issues for the Court to decide are simplified. The Court also finds that Plaintiff
21 has failed to provide any evidence that it will suffer prejudice from the continued stay. For the
22 first time in its reply brief, Plaintiff argues that it may never complete discovery and that
23 evidence related to its non-patent claims is likely to fade or be lost. (Dkt. No. 138 at 3, 4.) The
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1 Court finds no merit in the conjectural and unsupported assertion. There is no evidence of
2 prejudice.

3 The Court DENIES Plaintiff's motion to lift the stay. The Court does not find good
4 cause to lift the stay while the reexamination process remains ongoing.

5 The clerk is ordered to provide copies of this order to all counsel.

6 Dated this 27th day of December, 2011.

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10 Marsha J. Pechman
United States District Judge

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