UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WYETH, et al.	:	
Plaintiffs,	:	Civil Action No. 09-4850 (JAP)
v.	:	**ORDER**
ABBOTT LABORATORIES, et al.,	:	
Defendants.	:	

Presently before the Court in this patent infringement action is a renewed motion by Defendants Abbott Laboratories, Abbott Cardiovascular Systems, Inc., Boston Scientific Corporation and Boston Scimed, Inc. ("Defendants") to stay the proceedings pending *inter partes* reexamination of the patents-in-suit, U.S. Patent Nos. 7,591,844 and 6,746,773, (the "'844 patent" and the "'773 patent"), by the Patent and Trademark Office ("PTO"). A similar motion had been denied by the Court by way of its Opinion and Order dated January 31, 2011. In renewing their motion, Defendants' contend that circumstances have changed since the Court's earlier decision and the factors relevant to a motion to stay now weigh in favor of staying this action pending the reexamination.

In support of their motion, Defendants first point to the fact that Plaintiffs have withdrawn from the drug-eluting stent business and, therefore, the parties are no longer competitors in the stent market. In its earlier decision, the Court found that Plaintiffs would be prejudiced by the imposition of a stay because the parties were direct competitors. *See*

January 31, 2011 Opinion at 4. Defendants argue that the risk of such prejudice no longer exists.

Additionally, Defendants point out that the reexamination has progressed and an Action Closing Prosecution has issued for '844 patent. As to both asserted patents, the PTO has rejected every claim on multiple independent grounds. Thus, Defendants contend that the reexamination will likely simplify or resolve the issues in this case.

Finally, Defendants contend that discovery is in an early stage. Furthermore, no trial date has been set.[1]

In deciding whether to stay a matter pending reexamination, courts apply a three-part test. A court should consider "(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set." *Xerox Corp. v. 3Com Corp.*, 69 F. Supp 2d 404, 406 (W.D.N.Y. 1999).

Having considered the above factors, the Court finds that under the present circumstances, a stay of this matter is warranted. Because Plaintiffs are no longer competing in the stent business against Defendants, a stay will not unduly prejudice Plaintiffs. Being that all of the claims of the asserted patents stand rejected, it is likely that the reexamination proceeding will simplify the issues in the case. Finally, fact discovery is in a relatively early stage and the case is far from being ready for trial. Consequently,

IT IS on this 6th day of February 2012

[1] Subsequent to the filing of this motion, Defendants requested that the Court set a trial date for February 2013. Defendants opposed the request and argued, *inter alia*, that the case would not be ready for trial until at least mid-2013. In either case, it is evident that, presently, this case is not close to being trial ready.

ORDERED that Defendants' motion to stay this matter pending *inter partes* reexamination of U.S. Patent Nos. 7,591,844 and 6,746,773 [#216] is GRANTED; and it is further

ORDERED that the matter remained stayed until the later of: (1) completion of the *inter partes* reexamination of the'773 patent by the PTO and any appeals taken therefrom; (2) completion of the *inter partes* reexamination of the '844 patent by the PTO and any appeals taken therefrom, and it is further

ORDERED that the Clerk administratively terminate the action in his records without prejudice to the right of the parties to reopen the proceedings upon the conclusion of the stay to obtain a final determination of the litigation.

/s/ JOEL A. PISANO
United States District Judge