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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT JACOBSEN,
Plaintiff,

No. C 06-01905 JSW

v.

MATTHEW KATZER and KAMIND
ASSOCIATES, INC.,
Defendants.

**ORDER DENYING MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION; DENYING
MOTION FOR STAY; AND,
DENYING REQUEST FOR
CLARIFICATION**

Now before the Court is the motion for leave to file a motion for reconsideration, a motion for stay and a request for clarification filed by Plaintiff Robert Jacobsen.¹ Plaintiff requests reconsideration of the Court order issued on October 20, 2006 granting the motions by defendants to dismiss for failure to state a claim upon which relief can be granted and special motions to strike. Having carefully reviewed Plaintiff's papers and considered the relevant legal authority, and good cause appearing, the Court hereby DENIES Plaintiff's motion for leave to file a motion for reconsideration; DENIES Plaintiff's motion for a stay; and, DENIES Plaintiff's request for clarification.

A. Motion for Reconsideration.

A motion for reconsideration may be made on one of three grounds: (1) a material difference in fact or law exists from that which was presented to the Court, which, in the exercise of reasonable diligence, the party applying for reconsideration did not know at the time of the order; (2) the emergence of new material facts or a change of law; or (3) a manifest

¹ Although Plaintiff initially moved the Court for reconsideration without filing a motion for leave to file such a motion, because Plaintiff has apparently re-filed the motion properly, the Court will overlook the initial filing. Civil L.R. 7-9(a).

1 failure by the Court to consider material facts or dispositive legal arguments presented before
2 entry of the order. Civ. L.R. 7-9(b)(1)-(3). In addition, the moving party may not reargue any
3 written or oral argument previously asserted to the Court. Civ. L.R. 7-9(c).

4 Although unclear from Plaintiff's filing, Plaintiff ostensibly moves for reconsideration
5 for the Court to consider dispositive legal arguments that it failed to consider initially. Plaintiff
6 contends that the Court failed to consider that in order to merit the protection of California Code
7 of Civil Procedure § 425.16, Defendants must show that their pre-litigation activity, *i.e.*, the
8 filing of the Freedom of Information Act request, was made in serious and good faith
9 contemplation of litigation. (Motion at 2.) Plaintiff also contends that he suffered antitrust
10 damages in the amount of \$203,000 in licensing fees, and that he should succeed on a libel per
11 quod theory raised at the oral argument on Defendants' motions. The Court considered the
12 arguments now raised when considering Plaintiff's oppositions to the motions to dismiss and
13 special motions to strike and found them unpersuasive. It finds them similarly unpersuasive in
14 the context of the motion to reconsider. In addition, Plaintiff may not move for reconsideration
15 on the basis of any written or oral argument previously asserted to the Court. Civ. L.R. 7-9(c).
16 Plaintiff's motion for leave to file a motion for reconsideration is DENIED.

17 **B. Motion to Stay.**

18 Plaintiff requests a "stay of execution" of the Court's order until the Court conducts a
19 claim construction. Plaintiff argues that he will be able, by virtue of the strength of his
20 arguments in this litigation, to demonstrate the merits of his claims and the lack of merit of
21 Defendants' purportedly anticipated claims. The Court does not deem it necessary to stay its
22 ruling simply because Plaintiff believes he will ultimately prevail and that Defendants'
23 substantive contentions will ultimately not prevail. The presumption binding this Court, unless
24 demonstrated otherwise by clear and convincing evidence, is that having survived a full patent
25 examination process, including all potential invalidity challenges, the patents at issue are
26 entitled to a presumption of validity pursuant to 35 U.S.C. § 282. *See, e.g., Abbott Lab. v.*
27 *Geneva Pharm., Inc.*, 182 F.3d 1315 (Fed Cir. 1999). There is no indication in the current
28

1 record that such an allegedly anticipated infringement lawsuit would have been objectively
2 meritless such that no reasonable litigant could expect success on the merits.

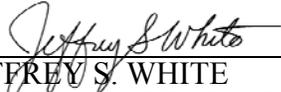
3 There is no indication in the record before the Court that Defendants acted in bad faith
4 when asserting that they sent the Freedom of Information Act request in anticipation of
5 litigation. There is no indication from the record that the anticipated litigation was
6 contemplated in bad faith. (*See* Declaration of Matthew Katzer in support of special motion to
7 strike, ¶ 7.) Plaintiff’s belief that he will ultimately prevail in this lawsuit does not change
8 either the presumption of the patents’ validity or the Defendants’ stated good faith belief in
9 anticipating possible infringement litigation against Plaintiff or his affiliates. Therefore,
10 Plaintiff’s motion to stay the effect of the Court’s ruling is DENIED. Due to the delay in
11 Plaintiff’s filing of the motion for reconsideration and the late hour, the Court HEREBY
12 extends the deadline for payment of attorney’s fees until Wednesday, November 1, 2006.

13 **C. Request for Clarification.**

14 Plaintiff requests that the Court provide a clarification of its ruling and “seeks the
15 Court’s views on whether the anti-SLAPP ruling constitutes a finding of fact or conclusion of
16 law that affects the inequitable conduct claim.” (Motion at 5.) The inequitable conduct claim
17 was not before the Court when it ruled on Defendants’ motions to dismiss and special motions
18 to strike. The Court refuses to give an advisory opinion on the effect of its ruling on Plaintiff’s
19 remaining claims. Therefore, Plaintiff’s request for clarification is DENIED.

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21 **IT IS SO ORDERED.**

22
23 Dated: October 30, 2006

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25 _____
26 JEFFREY S. WHITE
27 UNITED STATES DISTRICT JUDGE
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