

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>)
BRIESE LICHTTENCHNIK VERTRIEBS)	No. 09 Civ. 9790
GmbH, and HANS-WERNER BRIESE,)	
)	ORDER GRANTING DEFENDANTS'
Plaintiffs,)	MOTION TO STAY AND DENYING
)	PLAINTIFFS' REQUEST TO
-against-)	<u>TRANSFER THE JUDGMENT</u>
)	
BRENT LANGTON, B2PRO, KEY)	
LIGHTING, INC., and SERGIO ORTIZ,)	
)	
Defendants.)	
)	
)	
<hr/>)

I. INTRODUCTION

Now pending before the Court is Defendants' unopposed motion for a stay of the execution of the judgment. ECF No. 487.¹ Also pending before the Court is a letter brief from Plaintiffs requesting that the Court transfer the judgments in this case to a California Court. Defendants have filed a response to Plaintiffs' letter brief. For the reasons set forth below, Defendants' motion is GRANTED and Plaintiffs' request is DENIED.

///

¹ Defendants filed the motion on March 5, 2014, and pursuant to Civil Local Rule 6.1(b), the deadline for Plaintiffs' response was March 19, 2014. As of the date of this Order, Plaintiffs have yet to file a response.

II. DISCUSSION

The Court held a trial in this matter, and the jury found Defendants liable for patent infringement. ECF No. 435 ("Verdict"). The Court entered judgment on January 22, 2014, awarding Plaintiffs \$953,424.66, which encompassed \$300,000 in compensatory damages, \$600,000 in enhanced damages, and pre- and post-judgment interest. ECF No. 483 ("Jan. 22 Judgment"). On February 19, 2014, the Court entered a separate judgment in favor of Plaintiffs in the amount of \$51,614.11 in connection with sanctions issued against Defendants. ECF No. 486 ("Feb. 19 Judgment"). Both sides have appealed. ECF Nos. 482, 484.

On January 22, 2014, the U.S. Patent and Trademark Office ("PTO") issued a Non-Final Office Action regarding the patent at issue in this suit, U.S. Patent No. 5,841,146 (the "'146 Patent"). ECF No. 489-1. In consideration of the prior art, the examiner rejected a number of the claims in the '146 Patent and concluded that those claims are subject to reexamination. Id.

Defendants now move for a stay of execution of the damages and monetary relief awarded in connection with the January 22 Judgment pending the PTO's reexamination of the '146 Patent. ECF No. 487 ("Mot.").² Plaintiffs declined to file a response to the Motion within the time set forth by Civil Local Rule 6.1(b). In light of Plaintiffs' failure to respond and for good cause shown, Defendants' Motion is GRANTED. The Court STAYS the

² There is no indication that Defendants seek to stay the execution of the February 19 Judgment.

execution of the January 22 Judgment pending the outcome of the PTO's reexamination of the '146 Patent.

Also pending before the Court is Plaintiffs' letter brief, requesting that they be permitted to transfer the January 22 and February 19 Judgments to a California Court so that Defendant Sergio Ortiz may be served. Plaintiffs have cited no law in support of their request. Defendants oppose the letter brief on a number of grounds: (1) Plaintiffs should be required to notice a motion, (2) Plaintiffs' request runs afoul of 28 U.S.C. § 1963 because Defendants' appeal is still pending before the Federal Circuit, and (3) the PTO's reexamination of the '146 patent is still pending.

Defendants have a point. As an initial matter, the Court declines to grant Plaintiffs' request with respect to the January 22 Judgment, since execution of that judgment is now stayed. As to the February 19 Judgment, the Court agrees that Plaintiffs should have filed a motion and that their request is potentially barred by 28 U.S.C. § 1963. The statute provides that "[a] judgment in an action for the recovery of money may be registered by filing a certified copy of the judgment . . . in any judicial district, when [1] the judgment has become final by appeal . . . or [2] when ordered by the court that entered the judgment for good cause shown." 28 U.S.C. § 1963. Here, an appeal is still pending and Plaintiffs have made no attempt to show good cause or otherwise respond to Defendants' arguments. Accordingly, Plaintiffs' request is DENIED without prejudice.

III. CONCLUSION

For the foregoing reasons, Defendants' motion to stay is GRANTED. The Court stays the execution of the January 22 Judgment pending the PTO's reexamination of the '146 patent. Within fifteen (15) days of the resolution of the PTO reexamination, the parties shall notify the Court of the outcome. The Court also DENIES Plaintiffs' request to transfer the January 22 and February 19 Judgments. Plaintiffs may move to transfer the February 19 Judgment, so long as they can show good cause for such action. Any request to transfer the January 22 Judgment will not be entertained until after the pending reexamination proceedings before the PTO have concluded.

IT IS SO ORDERED.

March 21, 2014

A handwritten signature in blue ink, appearing to read "Samuel J. Kent", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE