

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SKY TECHNOLOGIES LLC,

Plaintiff,

v.

SAP AG and SAP AMERICA, INC.,

Defendants.

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CIVIL ACTION NO. 2:06-CV-440-DF

O R D E R

Before the Court is Defendants’ Motion to Stay Pending Reexamination Appeal. Dkt. No. 305. Also before the Court are Plaintiff’s response and Defendants’ reply. Dkt. Nos. 307 & 309. Having considered the briefing and all relevant papers, the Court finds that Defendants’ motion should be DENIED WITHOUT PREJUDICE and that all pending motions should be DENIED WITHOUT PREJUDICE.

I. DISCUSSION

The Court held a status conference on December 9, 2009, following resolution of an interlocutory appeal to the United States Court of Appeals for the Federal Circuit on an issue of standing. *See Sky Techs. LLC v. SAP AG*, 576 F.3d 1374 (Fed. Cir. 2009). Plaintiff has moved to lift a stay that was entered in connection with the appeal. *See* Motion, Dkt. No. 304; 9/17/2008 Order, Dkt. No. 294. Due to the Court’s trial schedule for Marshall Division cases, the next available trial setting is October 2010, some ten months from now. The Court and the parties are likely to have more information regarding the status of reexamination proceedings at a

time closer to October 2010. At the present time, the Court does not find sufficient reason to stay the above-captioned case, particularly because discovery is closed and the case was being readied for trial when the above-mentioned interlocutory appeal occurred. Defendants motion to stay should therefore be **DENIED WITHOUT PREJUDICE** subject to re-filing if and when appropriate.

Also, numerous pre-trial motions and other motions remain pending in the above-captioned case due to the late stage at which the above-mentioned interlocutory appeal occurred. All pending motions should be **DENIED WITHOUT PREJUDICE** subject to re-filing if and when appropriate. The Court also enters a motion practice order contemporaneously herewith.

If either or both parties desire a transfer of the above-captioned case to the Texarkana Division, such party or parties should inform the Court in writing within 30 days of this Order.

II. CONCLUSION

Defendants' Motion to Stay Pending Reexamination Appeal (Dkt. No. 305) is hereby **DENIED WITHOUT PREJUDICE** subject to re-filing if and when appropriate.

All pending motions are hereby **DENIED WITHOUT PREJUDICE** subject to re-filing if and when appropriate.

The Court hereby **SETS** this case for Final Pretrial Conference on October 4, 2010. The parties are also hereby **ORDERED** to meet and confer regarding an appropriate scheduling order and to submit to the Court, by motion, an agreed scheduling order or competing scheduling orders within 60 days of this Order. The parties' proposal(s) should include, at a minimum, a summary judgment briefing schedule, a briefing schedule for motions to strike expert testimony, and deadlines for pre-trial disclosures and submissions.

If either or both parties desire a transfer of the above-captioned case to the Texarkana Division, such party or parties should inform the Court in writing within 30 days of this Order.

IT IS SO ORDERED.

SIGNED this 11th day of December, 2009.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE