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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOTIVA, LLC,  
Plaintiff,  
v.  
NINTENDO CO., LTD., *et al.*,  
Defendants.

Case No. C10-0349RSL  
ORDER DENYING MOTION  
FOR RECONSIDERATION

This matter comes before the Court on plaintiff’s motion for reconsideration of the Court’s June 11, 2010 order granting defendants’ motion to stay this litigation pending reexamination of the patent in suit (Dkt. #123, the “Order”). Defendants requested the stay because the United States Patent and Trademark Office (“PTO”) has granted their request to reexamine U.S. Patent No. 7,292,151 (“the ‘151 patent”), which is the subject of this action.<sup>1</sup>

“Motions for reconsideration are disfavored. The Court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.” Local Rule 7(h).

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<sup>1</sup> Because the matter can be decided based on plaintiff’s memorandum and supporting documents, plaintiff’s request for oral argument is denied.

1 In this case, plaintiff argues that the Court erred in two ways. First, plaintiff contends that  
2 the Court “did not consider the total time it takes for reexamination and exhaustion of all  
3 appeals: more than seven years.” Motion at p. 1. However, the seven year delay plaintiff notes  
4 occurred in one cited case; it is speculative to conclude that this case will face a similar delay.  
5 Most importantly, plaintiff is incorrect in assuming that the Court failed to consider the potential  
6 delay. In fact, the Order explicitly noted that the intervening delay is “likely to be protracted.”  
7 Order at p. 3. The Court is familiar with the appellate process and aware of how long appeals  
8 can take. Plaintiff’s contention that the Court was unaware of the delays inherent in that process  
9 is unsupported and unfounded.

10 Second, plaintiff contends that the benefits of a stay are lower than the Court apprehended  
11 because the PTO has not yet issued an office action. “Without an office action, the Court does  
12 not know if the PTO will reject or confirm the claims and has very little information on the  
13 likelihood that claims will survive.” Motion at p. 4. Plaintiff relies on another, unrelated case to  
14 argue that “once the PTO confirms claims, the confirmed claims are likely to issue without any  
15 significant changes.” *Id.* at p. 4. Plaintiff’s contention that this case will proceed in the same  
16 fashion is speculative. Equally speculative is whether the PTO will reject or confirm claims. In  
17 contrast, as the Order noted, this Court and the parties should not expend significant resources  
18 litigating claims that may be eliminated or substantially altered.

19 Accordingly, the motion for reconsideration (Dkt. #124) is DENIED.

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21 DATED this 12th day of July, 2010.

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25 Robert S. Lasnik  
26 United States District Judge  
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