IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DIGENE CORPORATION, Plaintiff, v. VENTANA MEDICAL SYSTEMS and BECKMAN COULTER INC., Defendants.	)	Civil Action No. 01-752 KAJ

MEMORANDUM ORDER

Presently before me is the plaintiff's Motion for Partial Reconsideration of the Court's May 7, 2004 Order. (Docket Item ["D.I."] 265; the "Motion".) For the reasons that follow, the Motion will be denied.

I. BACKGROUND

The plaintiff, Digene Corporation ("Digene"), filed this case on November 21, 2001, alleging patent infringement by defendant Ventana Medical Systems ("Ventana"). (D.I 1.) Digene subsequently amended its complaint and named Beckman Coulter, Inc. ("Beckman") as an additional defendant. (D.I. 119.) Beckman filed a Motion to Compel Arbitration and to Stay Proceedings on December 27, 2002. (D.I. 128; "Beckman's motion".) I held a bench trial on Beckman's motion and, on May 7, 2004, I issued Post-Trial Findings of Fact and Conclusions of Law (D.I. 263) and an Order (D.I. 264; the "Order"). The Order directs the parties to arbitrate Digene's claims against Beckman that arise out of Beckman's rights under a Cross License Agreement and it stays this case pending the outcome of arbitration.

Digene filed its Motion on May 21, 2004, asking me to reconsider what it characterizes as "a procedural aspect of the Order." (D.I. 265 at 2.) Essentially, Digene requests that I modify the Order to allow Digene's case against Ventana to go forward prior to the arbitration with Beckman. (*Id.* at 3.) In this case, Digene has accused Beckman of indirect infringement and Ventana of direct infringement. (*See* D.I. 119.) Digene argues that, if the arbitrator determines that Beckman is liable for indirect infringement, the arbitrator will also have found that direct infringement occurred by Ventana, since a finding of indirect infringement is predicated upon a finding of direct infringement. (*Id.* at 2-3 (citing *Epcon Gas Sys., Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1033 (Fed. Cir. 2002)).) Thus, Digene proposes proceeding with its claims against Ventana prior to arbitration with Beckman, in order to "reduce or eliminate the issues to be arbitrated with Beckman." (*Id.* at 3.)

Beckman opposes Digene's Motion, arguing that it is not in the interest of justice for Digene to first proceed with its litigation against Ventana. (D.I. 266 at 1.) Beckman states that it pursued arbitration in order to promptly resolve Digene's claims against it, and now that I have ordered arbitration to proceed, Beckman should not be forced to wait for the outcome of the Digene-Ventana case. (*Id.* at 1-2.) Ventana also opposes Digene's Motion, arguing that Digene's claims of furthering judicial economy are illusory, in that "there are no efficiency gains to be had by staying arbitration in favor of litigation." (D.I. 267 at 2.) Ventana also argues that proceeding to arbitration may resolve contractual issues between Digene and Beckman, which, in turn, may narrow any remaining issues to be litigated. (*Id.* at 2-3.)

II. STANDARD OF REVIEW

The standard that applies to motions for reargument has been summarized as follows:

> The District of Delaware, through published case law, has developed rules that govern motions for reargument under Local Rule 7.1.5.[1] These governing principles are simply stated: 1) reargument should be granted only when the merits clearly warrant and should never be afforded a litigant if reargument would not result in an amendment of an order, *see StairMaster Sports/Medical Products v. Groupe Procycle, Inc.*, 25 F. Supp. 2d 270, 292 (D. Del. 1998); 2) the purpose of reargument is to permit the Court to correct error without unduly sacrificing finality; 3) grant of the reargument motion can only occur in one of three circumstances: a) "where the Court has patently misunderstood a party," b) "[where the Court] has made a decision outside the adversarial issues presented to the Court by the parties," or c) "[where the Court] has made an error not of reasoning but of apprehension," *see Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1241 (D. Del. 1990); and 4) a motion for reargument may not be used by the losing litigant as a vehicle to supplement or enlarge the record provided to the Court and upon which the merits decision was made unless "new factual matters not previously obtainable have been discovered since the issue was submitted to the Court," *id.*

Schering Corp. v. Amgen, Inc., 25 F. Supp. 2d 293, 295 (D. Del. 1998).

III. DISCUSSION

In this case, Digene has not argued that my Order contained an error of law or fact, or that I misunderstood a party, or made a decision outside of the issues presented to me. Digene suggests that I alter the Order to stay the arbitration pending the outcome of the litigation so as to prevent "inconsistent rulings and unnecessary duplication of efforts" by the parties. (D.I. 265 at 2.) Digene has not directed me to any

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[1]A motion for reargument under Local Rule 7.1.5 is the "functional equivalent of a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). *Kavanagh v. Keiper*, 2003 U.S. Dist. LEXIS 23931 at *4 n.2 (D. Del. July 24, 2003) (citing *New Castle County v. Hartford Accident and Indem. Co.*, 933 F.2d 1162, 1176-77 (3d Cir. 1991)).

authority to support its contention that "re-sequencing" (*see* D.I. 265 at 3) the proceedings serves the interests of judicial economy. Ventana points out that the Federal Arbitration Act ("FAA") requires the underlying litigation to be stayed if there is "any issue referable to arbitration," *see* 9 U.S.C. § 3, and that "an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement," *see Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 (1983) ("federal law *requires* piecemeal resolution when necessary to give effect to an arbitration agreement") (emphasis in original).

I am also guided by the Third Circuit's recent decision in *Lloyd v. Hovensa, LLC et al.*, 369 F.3d 263 (3d Cir. 2004). In that case, the plaintiff, Lloyd, worked as a boilermaker and pipefitter for various contractors at the HOVENSA, LLC ("HOVENSA") refinery. *Lloyd*, 369 F.3d at 266. After HOVENSA awarded a contract to co-defendant Wyatt, V.I., Inc. ("Wyatt"), Lloyd applied for employment with Wyatt. *Id.* As a condition of having their applications considered, Wyatt required all applicants to sign a Dispute Resolution Agreement ("DRA"), which contained an arbitration clause. *Id.* Lloyd signed the DRA and was not hired. *Id.* Thereafter, Lloyd brought various claims of employment discrimination against HOVENSA and Wyatt. *Id.* at 266-67.

Wyatt filed a motion to compel arbitration, pursuant to the DRA, in which HOVENSA joined. *Id.* at 267. After holding an evidentiary hearing on the motion, the district court granted the motion to compel arbitration and dismissed Lloyd's complaint with prejudice, rather than staying the proceedings pending arbitration. *Id*. The district

court dismissed the action because it found all of Lloyd's claims to be arbitrable, thus leaving no claims for adjudication by the district court. *Id.*

The Third Circuit held that the district court erred when it dismissed the action with prejudice, rather than entering a stay. *Id.* at 271. Focusing on the plain language of the FAA, the Third Circuit noted that it "clearly states, without exception, that whenever suit is brought on an arbitrable claim, the Court 'shall' upon application stay the litigation until arbitration has been concluded." *Id.* at 269 (quoting 9 U.S.C. § 3). The court went on to hold that, when a party requests a stay of the proceeding as part of its motion to compel arbitration, "the District Court [is] obligated under 9 U.S.C. § 3 to grant the stay once it decided to order arbitration." *Id.*

Though *Lloyd* arises in a different procedural context than the instant case, the Third Circuit's reasoning is compelling, and its analysis and interpretation of the FAA are applicable here. *See id.* at 269-71. Thus, in light of the plain language of the FAA, previous Supreme Court precedent, and the Third Circuit's recent decision in *Lloyd*, the law is clear that, since Beckman's Motion was granted, the remainder of this case must be stayed pending the outcome of the arbitration between Digene and Beckman.[2]

[2]Even if I believed I had the discretion to do as Digene suggests, I would not be inclined to do it since I am unpersuaded that staying arbitration pending litigation would serve the interests of justice and economy any more than Digene and Beckman proceeding to arbitration at this time, particularly given the Supreme Court's statement that "federal law *requires* piecemeal resolution when necessary to give effect to an arbitration agreement." *Moses H. Cone,* 460 U.S. at 20 (emphasis in original).

IV. CONCLUSION

For the foregoing reasons, it is hereby ORDERED that Digene's Motion (D.I. 265) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
July 6, 2004