

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILIPS ELECTRONICS NORTH)
AMERICA CORPORATION and)
U.S. PHILIPS CORPORATION,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-123-KAJ
)
CONTEC CORPORATION, COMPO)
MICRO TECH, INC., SEOBY)
ELECTRONICS CO., LTD., REMOTE)
SOLUTION CO., LTD., F/K/A HANGO)
ELECTRONICS CO., LTD., HANGO)
REMOTE SOLUTION, INC.,)
)
Defendants.)

MEMORANDUM ORDER

I. INTRODUCTION AND BACKGROUND

On July 26, 2004, I entered a Permanent Injunction which permanently enjoins and restrains defendant Compo Micro Tech (“CMT”) from making, using or selling universal remote controls which incorporate, and are therefore infringing,¹ the scan programming method claimed by U.S. Patent No. 4,703,359 (“the ‘359 patent”), which is owned by plaintiffs Philips Electronics North America Corporation and U.S. Philips Corporation (collectively, “Philips”).² (D.I. 446.) Presently before me is defendant Compo Micro Tech’s (“CMT”) Motion to Stay the Injunction Dated July 26, 2004.

¹See *Philips Elecs. N. Am. Corp. v. Contec Corp.*, 312 F. Supp. 2d 642, 645 (D. Del. 2004) (granting in part and denying in part Philips’ motion for summary judgment of infringement).

²For a complete recitation of the circumstances leading to the entry of the Form of Judgment and the Permanent Injunction, see *Philips Elecs. N. Am. Corp. v. Contec Corp.*, 2004 U.S. Dist. LEXIS 13455 (July 12, 2004).

(Docket Item [“D.I.”] 447; the “Motion”.) For the reasons that follow, CMT’s Motion will be denied.

II. STANDARD OF REVIEW

A court may stay an injunction pending appeal pursuant to Federal Rule of Civil Procedure 62(c).³ In exercising its discretion to issue such a stay, the Federal Circuit has indicated that a court must consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511, 512 (Fed. Cir. 1990) (citations omitted). However, each factor need not be given equal weight, *see id.* at 513, and the court may use a flexible balancing approach, *see Arthrocare Corp. v. Smith & Nephew, Inc.*, 315 F. Supp. 2d 615, 619 (D. Del. 2004).

III. DISCUSSION

Having considered CMT’s assertion that it is entitled to a stay pending appeal (see D.I. 451), I find that CMT has not established any of the *Standard Havens* factors sufficient to warrant a stay. First, CMT has not made a strong showing that it is likely to succeed on the merits of its appeal. CMT intends to appeal my construction of the

³“When an appeal is taken from a...final judgment granting...an injunction, the court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party....” Fed. R. Civ. P. 62(c) (2004).

claim term “signal structure identification data”.⁴ (*Id.* at 3.) However, the “possibility of appellate de novo review of [] claim construction does not constitute an extraordinary circumstance to merit a stay.” *Arthrocare Corp.*, 315 F. Supp. 2d at 620 (citing *Eaton Corp. v. Parker-Hannifin Corp.*, 292 F. Supp. 2d 555, 582 (D. Del. 2003)). Furthermore, at trial, CMT asserted that claim 1 of the ‘359 patent was invalid as anticipated by a prior art Japanese reference and that claims 3 and 4 were invalid as obvious in light of that reference in combination with three other prior art references. (D.I. 451 at 3.) The jury found that the ‘359 patent was not invalid. (D.I. 419.) CMT intends to appeal that decision, relying on the same arguments it previously advanced, together with the trial testimony of Philips’ technical expert, which CMT thinks “supports a finding of invalidity as a matter of law.” (D.I. 451 at 3.) While CMT has concisely set forth the points it intends to raise on appeal, it has not set forth convincing evidence that it has a strong likelihood of success on the merits. Therefore, the first factor weighs against the issuance of a stay.

Second, CMT argues that it will be irreparably harmed if a stay is not granted because it will be “unable to fulfill existing orders for some of its largest customers....” (*Id.*) Such a reason is “insufficient to warrant a stay of an otherwise appropriate injunction.” *Fisher-Price, Inc. v. Safety 1st, Inc.*, 279 F. Supp. 2d 526, 529 (D. Del. 2003); *see also Arthrocare Corp.*, 315 F. Supp. 2d at 621 (“one who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected”) (quoting *Windsurfing*

⁴See *Philips N. Am. Corp. v. Contec Corp.*, 312 F. Supp. 2d 592, 598-601 (D. Del. 2004) (claim construction).

Int'l, Inc. v. AMF, Inc., 782 F.2d 995, 1003 (Fed. Cir. 1986); *E.I. DuPont de Nemours & Co. v. Phillips Petroleum Co.*, 659 F. Supp. 92, 94-95 (D. Del. 1987) (“the loss of customers or business built upon the sale and use of infringing products does not amount, in the context of a patent infringement suit, to irreparable harm from which [the defendant] should be shielded”). Thus, the second factor weighs against issuance of a stay.

Third, CMT says that Philips will not suffer irreparable harm if a stay is granted “because its interests can be fully protected by the payment of damages.” (D.I. 451 at 4.) CMT argues that, because Philips has licensed the ‘359 patent in the past, Philips will be adequately compensated for CMT’s continued infringement during the appeals process if CMT deposits, in escrow, an amount equal to \$1 per unit for each infringing remote sold from July 26, 2004 through August 31, 2004. (D.I. 451 at 4.) When faced with a nearly identical argument in *Arthrocare Corp.*, this court said that

[t]his argument is unpersuasive. Staying the injunction during the appeals process would essentially allow [the defendant] to continue to infringe, thereby further usurping the exclusivity that [the plaintiff] is entitled to enjoy as a result of its patent[]. Moreover, [the plaintiff’s] patent rights are not compromised simply because it opted to license its patents to select competitors. Once the patentee’s patents have been held to be valid and infringed, he should be entitled to the full enjoyment and protection of his patent rights.

315 F. Supp. 2d at 621 (internal quotation marks and citation omitted). Though CMT attempts to minimize its request for a stay by limiting it temporally, CMT admittedly stands to profit during the time of any stay by selling its infringing remote controls to its largest customers. (D.I. 451 at 3.) Such a result is insupportable, and I find that the third factor also weighs against entering a stay.

Finally, CMT says that if a stay is not granted, non-parties will suffer harm - specifically, CMT's customers "will have to find an alternate source for the products it contracted months ago to purchase from CMT." (*Id.* at 5.) However, the final *Standard Havens* factor is concerned with where the public interest lies, and, in this case, "public policy favors protection of the rights secured by valid patents." *Smith Int'l, Inc. v. Hughes Tool Co.*, 718 F.2d 1573, 1577 (Fed. Cir. 1983). Therefore, the fourth factor also weighs against the issuance of a stay.

IV. CONCLUSION

Because all of the four *Standard Havens* factors weigh against issuing a stay, I conclude that entering a stay pending appeal is not justified. Accordingly, it is hereby ORDERED that CMT's Motion (D.I. 447) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
August 24, 2004