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14 Attorneys for Defendant *DYNACRAFT BSC, Inc.*

15  
16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN FRANCISCO DIVISION**

19  
20 FISHER-PRICE, INC. and  
MATTEL, INC.,  
21  
22 Plaintiffs,  
23 v.  
24 DYNACRAFT BSC, INC.,  
25 Defendant.

Case No. 17-CV-03745-PJH

**DEFENDANT DYNACRAFT'S  
MOTION TO STAY LITIGATION  
PENDING INTER-PARTES REVIEW AND  
SUPPORTING MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: November 15, 2017  
Time: 9:00 a.m.  
Courtroom: 3, 3<sup>rd</sup> Floor  
Judge: Honorable Phyllis J. Hamilton

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on November 15, 2017 at 9:00 a.m., or as soon thereafter as the Court’s calendar permits, in Courtroom 3 on the 3<sup>rd</sup> Floor of the above-entitled Court located at 1301 Clay Street, Oakland, California, Defendant Dynacraft BSC, Inc. (“Dynacraft”) will, and hereby do, move this Court to stay the above-captioned case pending *inter-partes* review of the patents-in-suit. This motion is based on this Notice of Motion and Motion, the points and authorities herein, all pleadings and records in this case, and such oral argument and evidence as may be allowed by the Court at the time of the hearing.

Dated: October 10, 2017

/s/ Patricia L. Peden  
Patricia L. Peden (SBN 206440)  
LECLAIRRYAN LLP

## Motion to Stay Litigation Pending *Inter-Partes* Review

The Court should stay this action pending *inter-partes* review of the four patents-in-suit: U.S. Patent Nos. 7,950,978, 7,222,684, 7,487,850, and 7,621,543. On October 9, 2017, defendant Dynacraft filed four petitions seeking *inter-partes* review, demonstrating the invalidity of all relevant claims in each of those patents. Stated simply, it would be a waste of time, money, and resources to litigate this case until the IPRs are resolved.

A stay is appropriate in this case for at least three reasons.

**First**, a stay will simplify the central issues in this case and reduce the burden on the Court and the parties. If the Patent Office rejects some or all of the patent claims at issue in this case, then this case will either be terminated or significantly streamlined. Moreover, even if some of the claims are upheld, the Court and parties would benefit by litigating a streamlined version of this case armed with the Patent Office's guidance regarding claim construction and invalidity.

**Second**, because this case is still in its early stages, a stay will conserve resources and not interfere with the administration of justice. Indeed, this Court has not yet conducted a case management conference or established a schedule for resolving this dispute.

**Third and finally**, plaintiffs Fisher-Price and Mattel (collectively "Fisher-Price") will not suffer unfair prejudice if a stay is granted. Indeed, any delay resulting from a stay will be relatively short in light of the expedited *inter-partes* review process mandated by the America Invents Act.

### **Facts**

Fisher-Price filed this suit in January 2017 in the United States District Court for the District of Delaware, alleging that Dynacraft infringes four patents – the '978, '684, '850, and '543 patents. (Dkt. 1.) The asserted claims relate to three technologies – a "slow-start" control system for children's electric ride-on vehicles, blow-molded wheels for such vehicles, and a drive assembly and shifter mechanism for such vehicles.

On June 27, the Delaware court transferred this case to this Court in light of the Supreme Court's recent decision in *TC Heartland*. (See Dkt. 14-16.) On July 24, this case was assigned to this Court (Dkt. 27), and this Court set the initial case management conference for October 12

1 (Dkt. 28). That is, this case has just begun. The parties conducted their Rule 26(f) conference on  
2 September 17, but no party has made its initial disclosures or served any discovery requests.

3 In the meantime, Dynacraft filed four *inter-partes* review petitions, demonstrating that all  
4 four patents are invalid on October 9. (See IPR Nos. 2018-0038, 2018-0039, 2018-0040, and  
5 2018-0042.) In these IPR petitions, Dynacraft establishes that all of the relevant claims are  
6 obvious in light of prior art patents and publications.<sup>1</sup>

### 7 *Argument*

8 The Court should stay this case in light of the requested *inter-partes* reviews. A district  
9 court has the inherent power to manage its docket and stay proceedings, a power which extends to  
10 patent cases where parties have asked the Patent Office to review the patents-in-suit. See, e.g.,  
11 *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988). Indeed, judicial efficiency and  
12 the desire to avoid inconsistent results counsel in favor of a stay even before the Patent Trial and  
13 Appeal Board has acted on pending IPR petitions. See *Sec. People, Inc. v. Ojmar US, LLC*, 2015  
14 U.S. Dist. LEXIS 70011, \*3-4 (N.D. Cal. May 29, 2015). In fact, some courts in this district have  
15 recognized “a liberal policy in favor of granting motions to stay proceedings pending the outcome  
16 of USPTO” proceedings. *Id.* at \*4.

17 Courts generally consider three factors when deciding whether to stay a case pending an  
18 *inter-partes* review: (i) whether a stay will simplify the issues in the case; (ii) whether discovery  
19 is complete and a trial date has been set; and (iii) whether a stay would unduly prejudice or  
20 present a tactical disadvantage to the non-moving party. See *Sec. People*, 2015 U.S. Dist. LEXIS at  
21 \*4; *Finjan, Inc. v. Palo Alto Networks, Inc.*, 2016 U.S. Dist. LEXIS 69363, \*2 (N.D. Cal. May  
22 26, 2016 (J. Hamilton)).

23 \_\_\_\_\_  
24 <sup>1</sup> Specifically, Dynacraft explains that the ‘684 patent is anticipated and rendered obvious by  
25 U.S. Patent No. 5,859,509 (Bienz), U.S. Patent No. 4,634,941 (Klion), and U.S. Patent No.  
26 5,994,853 (Ribbe). The ‘978 is anticipated and rendered obvious by U.S. Patent No. 5,859,509  
27 (Bienz), U.S. Patent No. 4,634,941 (Klion), and U.S. Patent No. 5,994,853 (Ribbe). The ‘543  
28 patent is anticipated and rendered obvious by U.S. Patent Pub. No. 2005/0056474 (Damon), U.S.  
Patent No. 5,924,506 (Perego), U.S. Patent No. 4,513,981 (DeGraaff), U.S. Patent No. 3,910,332  
(Feller), and the Plastic Blow Molding Handbook by Norman Lee. And the ‘850 patent is  
anticipated and rendered obvious by U.S. Patent Pub. No. 2005/0056474 (Damon) and U.S.  
Patent Pub. No. 2005/0087033 (Chi).

1           These factors largely overlap with the factors Congress enumerated for stays pending  
2 analogous covered business method (“CBM”) review proceedings. *See* Leahy-Smith America  
3 Invents Act, Pub. L. No. 112-29, § 18(b)(1), 125 Stat. 284, 331 (2011). A fourth factor identified  
4 for CBM reviews – minimizing the burdens of litigation – also favors granting stay motions in  
5 *inter-parties* review proceedings.

6           As demonstrated below, each of these factors weigh strongly in favor of a stay in this  
7 case.

8       **I.     A Stay Will Simplify the Issues, Streamline Trial, and Reduce the Burden on the**  
9       **Parties and the Court.**

10           The Court should stay this case because doing so will simplify the issues and reduce the  
11 litigation burden on the parties and the Court. Indeed, the pending *inter-partes* review petitions  
12 likely will resolve this entire case because they demonstrate how *every* asserted claim of the  
13 patents-in-suit is invalid in light of the prior art. And when a patent claim is cancelled in a Patent  
14 Office proceeding, “the patentee loses any cause of action based on that claim, and any pending  
15 litigation in which the claims are asserted becomes moot.” *Advanced Connection Tech., Inc. v.*  
16 *Toshiba Am. Info. Sys.*, 2013 U.S. Dist. LEXIS 172989 (N.D. Cal. Nov. 27, 2013) (quoting  
17 *Fresenius USA, Inc. v. Baxter Int’l Inc.*, 721 F.3d 1330, 1340 (Fed. Cir. 2013)).

18           Even if the PTAB upholds the validity of some or all of the claims, its decision would still  
19 streamline the issues in this case. *See Finjan*, 2016 U.S. Dist. LEXIS 69363, \*2 (granting a stay  
20 where the PTAB instituted 6 of 13 IPR petitions affecting only 4 of 10 asserted patents). In  
21 *Finjan*, this Court noted that allowing the suit to proceed only with respect to 6 of the 10 asserted  
22 patents, while IPR petitions were pending for just 4 of the 10 asserted patents would be  
23 “cumbersome” and “proceeding in a piecemeal fashion could lead to duplicative efforts.” *Id.*

24           Waiting for the *inter-partes* review to conclude before proceeding in this case provides a  
25 number of advantages:

- 26           •     The prior art patents and printed publications relied on by Dynacraft will have  
27                 been first considered by the PTAB in light of its technical expertise.
- 28           •     In cases where *inter-partes* review is instituted, the estoppel rules will limit

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