



**TABLE OF CONTENTS**

A STAY IS UNIQUELY APPROPRIATE IN THIS CASE.....3

I. Certification Pursuant To W.D. Tex. Local R. CV-7(i).....3

II. *All Of The '070 Patent's Claims Are Likely To Be Cancelled By The PTAB* .....3

III. Congress Specifically Created PGRs To Permit Early Patent Challenges  
*Before Protracted Litigation Ensues* .....6

IV. *All Of The Traditional Factors Strongly Favor A Stay Here*.....8

A. A stay will not unduly prejudice or tactically disadvantage Kerr.....8

1. Vulcan filed its PGR petition almost immediately after  
Kerr filed this lawsuit.....8

2. Vulcan filed this motion soon after Vulcan filed its PGR petition .....9

3. Staying this case now will avoid duplicating the most burdensome  
stages of the litigation .....9

4. Kerr has many competitors in the fluid end industry.....9

B. This case is still in its very early stages .....10

C. A stay will greatly simplify the issues in this lawsuit.....10

## TABLE OF AUTHORITIES

### Cases

<i>RetailMeNot Inc. v. Honey Sci. LLC</i> , C.A. No. 18-937-CFC-MPT, 2020 WL 373341 (D. Del. Jan. 23, 2020).....	8, 10
<i>SAS Inst., Inc. v. Iancu</i> , 138 S. Ct. 1348 (2018) .....	10
<i>SZ DJI Tech. Co. v. Yuneec Int'l Co.</i> , No. CV 16-0595-BRO (KKX), 2016 WL 9114148 (C.D. Cal. Dec. 1, 2016) .....	10
<i>Tinnus Enters. LLC v. Telebrands Corp.</i> , No. 6:15-cv-551-RC-JDL, 2017 WL 379471 (E.D. Tex. Jan. 24, 2017).....	8, 10

### Statutes

35 U.S.C. § 311(b).....	7
35 U.S.C. § 314.....	7
35 U.S.C. § 315(b).....	7
35 U.S.C. § 315(e)(1).....	7
35 U.S.C. § 324(a) .....	7
35 U.S.C. § 324(c) .....	9
35 U.S.C. § 325(e)(2).....	7
35 U.S.C. § 326(a)(11).....	9

### Other Authorities

157 Cong. Rec. S1323-S1326.....	6, 8
---------------------------------	------

### Rules

W.D. Tex. Local R. CV-7(i) .....	3
----------------------------------	---

The unique circumstances here are likely a case of first impression for the Court.

First, the sole asserted '070 patent issued on March 17, 2020, and Kerr filed this lawsuit two (2) days later. Defendants quickly determined that most of the claims of the '070 patent are unambiguously anticipated by each of three separate prior art references that had not been considered by the USPTO, and all of the patent's claims are very likely to be cancelled in their entirety by the PTAB. For example, Claim 1 of the '070 patent reads identically on Blume '097:

Asserted '070 Patent	Prior Art – Blume '097 Patent
<p>FIG. 17</p>	<p>Figure 13</p> <p>Figure 12B</p>
<p>1. A method of manufacturing the fluid end assembly, comprising:</p> <ul style="list-style-type: none"> <li>providing a housing having a <b>first conduit</b> extending therethrough, and a <b>second conduit</b> extending therethrough that intersects the first conduit;</li> <li>forming an <b>endless groove</b> in the housing such that the groove surrounds the second conduit;</li> <li>positioning a <b>seal</b> within the groove;</li> <li>installing a <b>tubular sleeve</b> within the second conduit such that at least a portion of the sleeve engages with the seal;</li> <li>installing a <b>plurality of packing seals</b> within the sleeve; and</li> <li>installing a <b>reciprocating plunger</b> at least partially within the sleeve and the plurality of packing seals.</li> </ul>	

Ex. 1 (PGR Petition) at 10, 39-41, & 52-59.

Second, the pending PTAB proceeding is a relatively uncommon Post-Grant Review (“PGR”), which is uniquely different from the far more routine Inter Partes Review (IPR) proceedings. Because PGRs are only permitted shortly after a patent issues, Congress intended for these just-issued patents to be reevaluated by the PTAB *before* “expensive litigation.”:



# Congressional Record

PROCEEDINGS AND DEBATES OF THE 112<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 157

WASHINGTON, MONDAY, MARCH 7, 2011

No. 33

## Senate

MONDAY, MARCH 7, 2011

**S1326** CONGRESSIONAL RECORD—SENATE *March 7, 2011*

Other reforms included in the bill will improve the quality of U.S. patents over the long term. The bill creates a new post-grant review of patents, which can be sought within the first 9 months after the patent is issued and used to raise any challenge to the patent. This will allow invalid patents that were mistakenly issued by the PTO to be fixed early in their life, before they disrupt an entire industry or result in expensive litigation.

Ex. 2 (157 Cong. Rec. S1309, S1323-S1326) at S1309 & S1326 (emphases added). In addition, the estoppel effects for PGRs are significantly broader than they are for IPRs. Thus, the policy in favor of staying parallel litigation is considerably stronger for PGRs than for IPRs.

Third, *all* of the relevant factors support a stay in this case. The only accused product in the case – the ICON EVO product – is no longer being manufactured or sold. Kerr will not be

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.