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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 IVERA MEDICAL CORPORATION,
12 Plaintiff,

13 vs.

14 COVIDIEN LP, and COVIDIEN
15 SALES, LLC,

16 Defendants.

17 IVERA MEDICAL CORPORATION,
18 Plaintiff,

19 vs.

20 NEW ALLIANCE OF MEDICAL
21 DISTRIBUTORS, INC., D/B/A
22 ALLIANCE MEDICAL, and AMTEC
23 MEDICAL, INC.,

24 Defendants.

Case Nos. 13-cv-2147-H-RBB
13-cv-2607-H-RBB

**ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR
FINAL JUDGMENT**

[Doc. No. 23]

25 On July 17, 2014, Defendants Amtec Medical, Inc. and New Alliance of
26 Independent Medical Distributors, Inc. filed a motion for entry of final judgment and
27 to preserve their rights to seek attorneys' fees after appellate review. (Ivera v. New
28 Alliance (New Alliance), Case No. 3:13-cv-2607-H-RBB, Doc. No. 23.) On August
11, 2014, Plaintiff Ivera Medical Corporation filed its response in opposition to the

1 motion. (Id., Doc. No. 24.) On August 13, 2014, Defendants filed a reply. (Id., Doc.
2 No. 25.) On August 21, 2014, the Court vacated a hearing scheduled for August 25,
3 2014, and submitted the motion. (Id., Doc. No. 26.) The Court grants in part and denies
4 in part Defendants' motion.

5 Background

6 On September 12, 2013, Plaintiff Ivera Medical Corporation filed a complaint
7 against Defendants Covidien LP and Covidien Sales, LLC alleging infringement of
8 U.S. Patent Nos. 7,780,794, 7,985,302, and 8,206,514 (the "patents-in-suit"). (Ivera
9 v. Covidien (Covidien), Case No. 3:13-cv-2147-H-RBB, Doc. No. 1.) On October 29,
10 2013, Plaintiff filed a complaint against Defendants New Alliance of Medical
11 Distributors, Inc. and Amtec Medical, Inc. alleging infringement of U.S. Patent Nos.
12 7,780,794, 7,985,302, and 8,206,514 as well. (New Alliance, Doc. No. 1.). On
13 December 17, 2013, the Court consolidated the cases for pre-trial purposes. (Covidien,
14 Doc. No. 12; New Alliance, Doc. No. 14.)

15 This consolidated action is related to similar patent infringement actions also
16 pending before the Court. In Plaintiff Ivera's complaint against Defendants New
17 Alliance and Amtec, Plaintiff alleges that Defendants infringed the patents-in-suit by
18 distributing for sale "a disinfecting cap product referred to as the DualCap Solo."
19 (New Alliance, Doc. No. 1, Compl., ¶ 15.) In related cases, Plaintiff has asserted the
20 same patents-in-suit against Catheter Connections, Inc., an entity Plaintiff alleges to be
21 the manufacturer of the DualCap Solo.¹ (See Catheter I, Doc. No. 1, Compl., ¶ 12;
22 Catheter II, Doc. No. 1, Compl., ¶ 10.) Plaintiff asserts the same infringement claims
23 against the Covidien Defendants' Kendall Disinfectant Cap and related products.
24 (Covidien, Doc. No. 7, First Amended Compl., ¶ 14.)

25 ¹ The two actions related to the present case are Ivera Medical Corporation
26 v. Catheter Connections, Inc. (Catheter I), Case No. 3:12-CV-0954-H-RBB, and Ivera
27 Medical Corporation v. Catheter Connections, Inc. (Catheter II), 12-CV-1587-H-RBB
28 (collectively, the "related cases"). The Court consolidated the related cases on
February 7, 2013. (See Catheter I, Doc. No. 32, Consolidation Order.). The Court
takes judicial notice of the public record regarding the related cases. Fed. R. Evid. 201.

1 On January 16, 2014, the Court granted a joint motion to stay this consolidated
2 action pending resolution of the related cases. (Covidien, Doc. No. 23; New Alliance,
3 Doc. No. 21.) The parties agreed that resolution of the related cases would be
4 “dispositive of the current case.” (Covidien, Doc. No. 20, at 2; New Alliance, Doc. No.
5 18 at 2.) The Court cited the parties’ joint stipulation to be bound by the outcome in
6 the related cases as a reason for granting their joint motion to stay. (Covidien, Doc.
7 No. 23, at 2; New Alliance, Doc. No. 21 at 2.)

8 On April 29, 2014, the Court granted summary judgment in the related cases,
9 invalidating the asserted patent claims for obviousness under 35 U.S.C. § 103(a).
10 (Catheter I, Doc. No. 98, Ord. Granting Summ. Judg.) On June 23, 2014, the Court
11 entered final judgment against Ivera Medical Corporation and in favor of Catheter
12 Connections, Inc. as to all asserted patent claims. (Id. Doc. No. 104.)

13 Discussion

14 Defendants move for final judgment on the grounds that the Court granted
15 summary judgment in Catheter Connections’s favor and invalidated the patents-in-suit,
16 an order to which Plaintiff and Defendants agreed to be bound. (Doc. No. 23-1.)
17 Plaintiff opposes and requests instead that the Court extend its stay of this case
18 indefinitely pending resolution of the related cases on appeal. (Doc. No. 24.) Plaintiff
19 agrees that the outcome of the related cases is still “dispositive of the outcome in this
20 case.” (Id. at 2.)

21 Defendants have shown good cause why the Court should lift its stay of this
22 action and enter judgment based on the parties’ agreement to be bound by the outcome
23 of the related cases.² See Fed. R. Civ. P. 41(a). The Court notes that the parties have
24 preserved their rights to seek appellate review of the underlying decision. Taylor
25 Brands, LLC v. GB II Corp., 627 F.3d 874, 878 (Fed. Cir. 2010) (“A party who
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27 ² The Defendants’ motion also stipulates to dismissal of all asserted
28 unenforceability and non-infringement counterclaims to remove the pendency of those
claims as a bar to finality for purposes of appeal. (Doc. No. 23-1 at 7.) Accordingly,
the Court dismisses these counterclaims without prejudice. Fed. R. Civ. P. 41(a)(2).

1 consents to the substance of a judgment should indeed be presumed to have waived its
2 right to appeal—absent an express reservation of that right on the record.”); Gatto v.
3 Comm’r of Internal Revenue, 1 F.3d 826, 827-28 (9th Cir. 1993) (upholding
4 petitioners’ stipulation that the result in their case be bound by the result in a related
5 case before the Tax Court, even though there had been no case-dispositive interlocutory
6 order in the petitioners’ case).

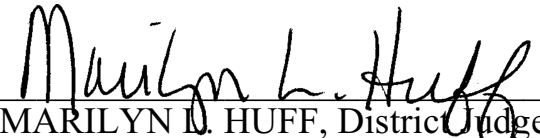
7 In contrast, Defendants have not shown good cause why the Court should
8 adjourn the deadline to seek attorneys’ fees. Exercising its discretion under Federal
9 Rule of Civil Procedure 54(d)(2), the Court declines to extend the time to seek
10 attorneys’ fees. See Petrone v. Veritas Software Corp., 496 F.3d 962 (9th Cir. 2007).

11 Accordingly, the Court orders as follows:

- 12 1. The Court lifts its stay of this action;
- 13 2. The Court dismisses without prejudice Defendants’ unenforceability and
14 non-infringement counterclaims; and
- 15 3. The Court grants Defendants’ motion for final judgment and denies
16 Defendants’ request to adjourn the deadline to seek attorneys’ fees.

17 **IT IS SO ORDERED.**

18 DATED: August 25, 2014

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20 MARILYN L. HUFF, District Judge
21 UNITED STATES DISTRICT COURT
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