

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1040

KONINKLIJKE PHILIPS ELECTRONICS N.V.,

Plaintiff-Appellant,

v.

CARDIAC SCIENCE OPERATING COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the Western District of Washington in case no. 08-CV-543, Judge Marsha J. Pechman.

ON MOTION

Before GAJARSA, LINN, and PROST, Circuit Judges.

PROST, Circuit Judge.

ORDER

Koninklijke Philips Electronics N.V. (Philips) moves to stay proceedings in this appeal pending district court action. Cardiac Science operating Company (Cardiac) opposes. The court considers whether Philips' appeal should be dismissed as premature.

On September 23, 2008, the United States District Court for the Western District of Washington issued an order dismissing Philips' complaint. Although the court's October 9, 2008 judgment states that "there are no remaining issues for the Court to resolve," the district court never explicitly dismissed Cardiac pending counterclaim.

Because the district court has not yet entered an order dismissing Cardiac's counterclaim, we deem the better course is to dismiss the appeal as premature. See

Nystrom v. Trex Co., 339 F.3d 1347, 1350 (Fed. Cir. 2003). After the district court has adjudicated Cardiac's counterclaim and entered final judgment, the parties may file any timely appeals.

Accordingly,

IT IS ORDERED THAT:

- (1) Philips' motion is denied.
- (2) The appeal is dismissed.
- (3) Each side shall bear its own costs.

FOR THE COURT

Feb. 6, 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Eric H. Chadwick, Esq.
Paul Thomas Meiklejohn, Esq.
J. Michael Jakes, Esq.

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