

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

Miscellaneous Docket No. 893

SHIRE LLC,

Plaintiff-Respondent,

v.

SANDOZ, INC.,

Defendant-Petitioner.

On Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(b)  
from the United States District Court for the District of Colorado in case no. 07-CV-  
00197, Judge Philip A. Brimmer.

ON PETITION FOR PERMISSION TO APPEAL

Before GAJARSA, LINN, and PROST, Circuit Judges.

PROST, Circuit Judge.

### ORDER

Sandoz, Inc. petitions for permission to appeal an order certified by the United States District Court for the District of Colorado as one involving a controlling issue of law as to which there is substantial ground for difference of opinion and for which an immediate appeal may materially advance the ultimate termination of the litigation. Shire LLC opposes.

Sandoz petitions for this court to hear the issue of whether a patentee who settles an earlier infringement case after a Markman ruling has issued is precluded under the doctrine of collateral estoppel from relitigating claim-construction issues determined in the prior case. In its summary judgment order, the district court

acknowledged two previous holdings from different district courts addressing the patents-in-suit, taking opposite positions regarding issues affecting the claim construction in this case. The court here refused to give preclusive effect to the first district court's claim construction but granted Sandoz's motion to certify on the ground that the issue could be dispositive as to the infringement of at least one of the patents in this case.

Ultimately, this court must exercise its own discretion in deciding whether it will grant permission to appeal interlocutory orders certified by a trial court. See In re Convertible Rowing Exerciser Patent Litigation, 903 F.2d 822 (Fed. Cir. 1990); 28 U.S.C. § 1292(c)(1). We determine that granting the petition in these circumstances is warranted.

Accordingly,

IT IS ORDERED THAT:

The petition for permission to appeal is granted.

FOR THE COURT

Feb. 6, 2009

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Keith D. Parr, Esq.  
Edgar H. Haug, Esq.

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