NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-1257, 2009-1317
(Reexamination No. 90/007,327)

IN RE SAMI CHEMICALS AND EXTRACTS, LTD.

Appeals from the United States Patent and Trademark Office,
Board of Patent Appeals and Interferences.

ON MOTION

Before BRYSON, Circuit Judge.

ORDER

Sami Chemicals and Extracts, Ltd. moves to continue the stay of the briefing schedule in 2008-1257 pending a decision in 2009-1317 and any further action by the United States Patent and Trademark Office (PTO). The Acting Director of the PTO opposes. Sami replies. The PTO moves to dismiss 2008-1257. Sami opposes. The Acting Director replies.

Sami sought ex parte reexamination of its patent. A final rejection was issued and appealed to the Board of Patent Appeals and Interferences. The Board reversed the rejection of two claims but sustained the remainder of the rejections. Sami concurrently filed a notice of appeal seeking review by this court and a petition requesting continued examination by the PTO. Sami's notice of appeal seeking review of the Board's decision was docketed as 2008-1257. On Sami's motion, the court granted a limited remand to allow the PTO to consider Sami's petition to continue examination. The PTO denied the petition. However, the Board sua sponte permitted

Sami to file a request for rehearing of the Board's original decision. The Board denied Sami's request for rehearing. Sami filed a notice of appeal seeking review of the Board's denial of rehearing, and that appeal was docketed as 2009-1317.

Sami requests that the court continue the stay in 2008-1257 pending disposition of 2009-1317 and subsequent action by the PTO, if necessary. Sami argues that this will spare the parties needless briefing and promote judicial economy. The Acting Director contends that 2008-1257 seeks review of the Board's original decision, which was superseded by the Board's rehearing decision. The Acting Director argues that the original Board decision is no longer a final agency action and cannot be appealed; thus, 2008-1257 should be dismissed. Sami contends that rehearing by the Board may not have been within the scope of the limited remand and thus requests that the court not dismiss 2008-1257.

The court determines that the better course is for the parties to address the court's jurisdiction with respect to 2008-1257 in their briefs, if they wish. Because the two appeals involve review of the Board's original decision and the Board's rehearing decision, the court determines that a continuation of the stay is not appropriate and that the appeals should be consolidated.

Accordingly,

IT IS ORDERED THAT:

(1) Sami's motion to continue the stay is denied.

(2) The Acting Director's motion to dismiss is denied.

(3) The appeals are consolidated. The revised official caption is reflected above.

(4) Sami is directed to file a single brief incorporating arguments concerning both appeals no later than August 21, 2009. The Acting Director is directed to file a single brief incorporating arguments concerning both appeals within 40 days of the date of service of Sami's brief. Sami is directed to file a single reply brief incorporating arguments concerning both appeals within 14 days of the date of service of the Acting Director's brief.

FOR THE COURT

JUN 12 2009
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUN 12 2009

JAN HORBALY
CLERK

cc: Richard J. Berman, Esq.
Raymond T. Chen, Esq.

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