NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

GRUNENTHAL GMBH, DEPOMED, INC.,
Plaintiffs-Appellees

v.

ACTAVIS ELIZABETH LLC, ACTAVIS, INC., ACTAVIS LLC, ACTAVIS LABORATORIES UT, INC., ROXANE LABORATORIES, INC.,
Defendants

ALKEM LABORATORIES LIMITED,
Defendant-Appellant

2017-1153

Appeal from the United States District Court for the District of New Jersey in Nos. 2:13-cv-04507-CCC-MF, 2:13-cv-06929-CCC-MF, 2:13-cv-07803-CCC-MF, 2:14-cv-03941-CCC-MF, and 2:14-cv-04617-CCC-MF, Judge Claire C. Cecchi.

ON MOTION

Before LINN, *Circuit Judge*.

O R D E R

Depomed, Inc. and Grünenthal GmbH move to dismiss for lack of jurisdiction or, in the alternative, to deactivate this appeal. Alkem Laboratories Limited does not oppose deactivation but does oppose dismissal.

In this Hatch-Waxman patent infringement action, the district court on September 30, 2016 issued an order resolving most of the underlying claims and severed a remaining counterclaim. The court further ordered "that, in order to maintain the status quo until the Court enters final judgment, and in light of the findings set forth above and in the accompanying Opinion, Defendants are hereby enjoined from launching their generic tapentadol hydrochloride products." Alkem appealed.

Depomed and Grünenthal argue that the district court has not yet entered final judgment and that there are claims and counterclaims still pending before the district court. This court agrees with Alkem, however, that this court has jurisdiction over the order pursuant to 28 U.S.C. § 1292(a)(1), which gives this court jurisdiction over appeals from interlocutory orders granting injunctions. Because the parties agree that it makes sense to deactivate the appeal here until entry of final judgment in the case, the court grants the motion to that effect.

Accordingly,

IT IS ORDERED THAT:

The motion is granted to the extent that the appeal is deactivated. Within 30 days from the date of entry of a Rule 58 judgment, the parties are directed to inform this court as to how they believe the appeal should proceed.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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