

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

METSO MINERALS, INC.,
Plaintiff-Appellee,

v.

**POWERSCREEN INTERNATIONAL
DISTRIBUTION, LIMITED (now known as Terex GB
Limited), POWERSCREEN NEW YORK, INC. AND
EMERALD EQUIPMENT SYSTEMS, INC.,**
Defendants-Appellants.

**AND
TEREX CORPORATION,**
Defendant-Appellant.

2011-1572, 2012-1168, -1169

Appeals from the United States District Court for the
Eastern District of New York in case no. 06-CV-1446,
Judge Arthur D. Spatt.

ON MOTION

Before RADER, *Chief Judge.*

O R D E R

Metso Minerals, Inc. ("Metso") moves to dismiss appeal nos. 2012-1168, -1169 for lack of jurisdiction. Powerscreen International Distribution Limited, Terex Corporation, Powerscreen New York, Inc., and Emerald Equipment Systems, Inc. ("Appellants") oppose. Metso replies. Appellants also move to lift the stay of appeal no. 2011-1572 and to consolidate appeal nos. 2012-1168, -1169 with appeal no. 2011-1572.

Noting that an accounting for damages has already begun in the district court and is still in progress, Metso contends that there has been no final judgment and this court does not have jurisdiction of the related appeals. This court disagrees. Section 1292(c)(2) of Title 28 gives this court jurisdiction over "an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to [this court] and is final except for an accounting." The statutory provision does not include a requirement the accounting not have started prior to this court assuming jurisdiction over the appeal.

Metso requests that Appellants be treated as a single party for briefing and oral argument purposes. The Practice Notes to Federal Circuit Rule 28 state "[w]hen there are multiple parties represented by the same counsel or counsel from the same firm, a combined brief must be filed on behalf of all the parties represented by that counsel or firm." Appellants are no longer all represented by the same law firm. As such, Appellants will not be treated as a single party for briefing purposes. For oral argument, however, Appellants will be allotted the normal 15 minutes, unless the panel directs otherwise.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss is denied.
- (2) The motion to lift the stay of appeal no. 2011-1572 and to consolidate appeal nos. 2012-1168, -1169 with appeal no. 2011-1572 is granted. The revised official caption is reflected above.
- (3) Appellants are directed to file their consolidated opening brief within 60 days of the date of filing of this order.

FOR THE COURT

MAY 03 2012

Date

/s/ Jan HorbalyJan Horbaly
Clerkcc: Michael C. Stuart, Esq.
Jon R. Trembath, Esq.**FILED**
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY 03 2012

JAN HORBALY
CLERK