

NOTE: This order is nonprecedential.

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

APELDYN CORPORATION,
Plaintiff-Appellant,

v.

**AU OPTRONICS CORPORATION AND
AU OPTRONICS CORPORATION AMERICA,**
Defendants-Appellees,

AND

**CHI MEI OPTOELECTRONICS CORPORATION
AND CHI MEI OPTOELECTRONICS USA INC.,**
Defendants-Appellees,

AND

**SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.,**
Defendants.

2012-1172

Appeal from the United States District Court for the
District of Delaware in case no. 08-CV-0568, Judge Sue L.
Robinson.

ON MOTION

Before SCHALL, *Circuit Judge*.

ORDER

Eidos, LLC and Eidos IV, LLC (collectively “Eidos”) move for leave to intervene in the appeal. Apeldyn Corporation opposes.

This appeal stems from a patent infringement action brought by Apeldyn against AU Optronics and other defendants. Apeldyn and Eidos entered into an agreement in which Eidos financially supported Apeldyn’s patent infringement actions in exchange for an interest in the proceeds from the actions and/or licensing efforts. In April, Apeldyn filed a complaint against Eidos in the United States District Court for the District of Oregon, alleging that the agreement expired and was no longer in force. That action remains pending in that district court.

Eidos now urges that it has an interest in the appeal because Apeldyn no longer represents Eidos’s interests. Eidos argues that their agreement requires Apeldyn and Eidos to agree on counsel, but Apeldyn is now represented in the appeal by the counsel who is adverse to Eidos in the Oregon action.

Eidos was not a party in the district court infringement action and made no effort to intervene. Under such circumstances, “[a] court of appeals may, but only in an exceptional case for imperative reasons, permit intervention where none was sought in the district court.” *McKenna v. Pan Am. Petroleum Corp.*, 303 F.2d 778, 779 (5th Cir. 1962). Eidos presents no position relating to the substance of the appeal in which its interest is adverse to Apeldyn’s. Its unsupported assertion that its interests

will not be adequately represented by the appellants do not meet the burden to obtain permission to intervene on the side of appellants in these circumstances. Moreover, Eidos's concerns regarding the applicability of its agreement with Apeldyn are before the Oregon district court.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

NOV 02 2012

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Scott G. Seidman, Esq.
Terrence Duane Garnett, Esq.
Donald R. McPhail, Esq.
Bernard J. DiMuro, Esq.

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

NOV 02 2012

JAN HORBALY
CLERK