

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-1324

MAXWELL TECHNOLOGIES, INC.,

Plaintiff-Appellee,

v.

NESSCAP, INC. and NESSCAP CO., LTD.,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of California
in case no. 06-CV-2311, Judge John A. Houston.

ON MOTION

Before MOORE, Circuit Judge.

ORDER

NessCap, Inc. et al. (NessCap) move to vacate the preliminary injunction issued by the United States District Court for the Southern District of California and to dismiss this appeal, due to settlement.

The proper course when the parties have settled is to dismiss the appeal, unless the parties request that that the case be remanded so that the trial tribunal can consider whether to vacate its own decision due to settlement. U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18 (1994). Because it appears that the parties seek to have the preliminary injunction vacated due to settlement, absent objection received within 14 days, we will remand this case to the district court so that it may consider whether to vacate the preliminary injunction.

Accordingly,

IT IS ORDERED THAT:

Absent objection received within 14 days of the date of filing of this order, the court will deny NessCap's motion and this case will be remanded to the district court so that the district court may consider whether to vacate the preliminary injunction.

FOR THE COURT

MAR 19 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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

cc: David C. Doyle, Esq.
George W. Neuner, Esq.

MAR 19 2009

**JAN HORBALY
CLERK**

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