

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1168

FAIRCHILD SEMICONDUCTOR CORPORATION,

Plaintiff-Appellee,

v.

THIRD DIMENSION (3D) SEMICONDUCTOR, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the District of Maine
in case no. 08-CV-158, Judge D. Brock Hornby.

ON MOTION

Before MAYER, SCHALL, and MOORE, Circuit Judges.

MOORE, Circuit Judge.

ORDER

Third Dimension Semiconductor, Inc. moves to stay all proceedings before the United States District Court for the District of Maine pending disposition of this appeal of a preliminary injunction. Fairchild Semiconductor Corporation opposes.* Third Dimension replies.

The district court granted a preliminary injunction prohibiting Third Dimension from terminating a license agreement. Third Dimension appealed that preliminary injunction, seeking review by this court, and now moves for this court to stay all proceedings at the district court pending disposition of the appeal. Third Dimension

* Fairchild indicates that it misinterpreted our rules concerning the due date for its response to the motion. We sua sponte grant Fairchild a two-day extension of time to file its response.

argues that upon the filing of its notice of appeal, the district court was divested of all jurisdiction to act on matters that it asserts are related to this appeal.

Third Dimension's arguments are without merit. An appeal from a *final judgment* divests the district court from jurisdiction to proceed with matters involved in the appeal. A preliminary injunction, i.e., an injunction *pendente lite*, is an injunction issued pending the ongoing litigation. Although a district court may not proceed with matters involved with the injunction itself, e.g., it may not amend the injunction, Power Controls Corp. v. Hybrinetics, Inc., 806 F.2d 234, 237 (Fed. Cir. 1986), or make findings to support its injunction while the injunction is on appeal, Chemlawn Servs. Corp. v. GNC Pumps, Inc., 823 F.2d 515, 518 (Fed. Cir. 1987), the district court may proceed with the litigation and permit discovery, enter rulings on summary judgment, or hold a trial on the merits. See Moltan Co. v. Eagle-Picher Indus., Inc., 55 F.3d 1171, 1174 (6th Cir. 1995); see also Ex parte National Enameling & Stamping Co., 201 U.S. 156, 161 (1906) (noting that other proceedings in a trial court were not stayed pending appeal of an injunction); N.Y. State Nat'l Org. for Women v. Terry, 886 F.2d 1339, 1350 (2d Cir. 1989) (an appeal from a preliminary injunction does not divest the trial court of jurisdiction to proceed on the merits unless otherwise ordered).

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

MAR 25 2009

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

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

MAR 25 2009

JAN HORBALY
CLERK

cc: Robert H. Stier, Jr., Esq.
Michael W. Shore, Esq.

s8