

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1595

CREATIVE COMPOUNDS, LLC,

Plaintiff-Appellant,

v.

STARMARK LABORATORIES,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida in case no. 07-CV-22814, Judge Alan S. Gold.

ON MOTION

Before MICHEL, Chief Judge, SCHALL and LINN, Circuit Judges.

SCHALL, Circuit Judge.

ORDER

Starmark Laboratories moves to dismiss Creative Compounds, LLC's appeal of the September 17, 2009, order of the United States District Court for the Southern District of Florida. Creative Compounds opposes.

Creative Compounds filed a complaint seeking a declaration that it did not infringe Starmark's patent and that the patent was invalid. Starmark filed counterclaims asserting that Creative Compounds infringed Starmark's patent and that a second patent, owned by Creative Compounds, was invalid. In its September 17 order, the district court stated that Starmark's patent was valid and infringed by Creative Compounds and that Creative Compounds' patent was invalid. The district court ordered that the case be closed.

Starmark moved to vacate the portion of the district court's order closing the case so that it could seek injunctive relief and a trial on the issues of damages and willfulness. The district court granted Starmark's motion, vacated its ruling that the case be closed, and reopened the case.

There is no final judgment in this case. Because there is a pending claim for injunctive relief, the case is not final except for an accounting. Thus, we must dismiss this appeal. Creative Compounds may if appropriate file a notice of appeal after the district court rules on the request for injunctive relief or enters final judgment.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss is granted.
- (2) Each side shall bear its own costs.

FOR THE COURT

DEC 30 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Matthew A. Rosenberg, Esq.
Frederick A. Tecce, Esq.

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ISSUED AS A MANDATE: DEC 30 2009

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

DEC 30 2009

JAN HORBALY
CLERK