

NOTE: This order is nonprecedential.

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

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**DENNIS RIORDAN,**  
*Plaintiff-Appellant,*

v.

**H.J. HEINZ COMPANY,**  
*Defendant-Appellee.*

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2010-1167

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Appeal from the United States District Court for the  
Western District of Pennsylvania in case no. 08-CV-1122,  
Judge Nora Barry Fischer.

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**ON MOTION**

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**O R D E R**

H.J. Heinz Company submits a motion to dismiss this appeal as untimely. Dennis Riordan submits a motion for leave to proceed in forma pauperis. Heinz opposes.

Riordan filed suit against Heinz, initially asserting, inter alia, a claim of patent infringement. Riordan submitted an amended complaint which the district court held asserted claims of misappropriation of ideas, misappropriation of trade secrets, trademark infringement, and

copyright infringement, but not patent infringement. The district court held that Riordan had voluntarily withdrawn any claim of patent infringement. After the district court issued a memorandum opinion and closed the case, Riordan filed an appeal, expressly seeking review by the United States Court of Appeals for the Third Circuit. However, the district court transmitted the notice of appeal to this court.

It appears that this case may not arise under the jurisdiction of this court, that the appeal should have been transmitted to the court of appeals named in the notice of appeal, and that we should transfer the appeal to the Third Circuit. *See Nilssen v. Motorola, Inc.*, 203 F.3d 782 (Fed. Cir. 2000) (case does not arise under the patent laws if patent infringement claims are dismissed without prejudice); *Gronholz v. Sears, Roebuck & Co.*, 836 F.2d 515 (Fed. Cir. 1987) (dismissal of patent claim amounts to amendment of pleading; jurisdiction of this court is determined based upon amended pleading); Fed. R. App. P. 3(d)(1) ("The clerk [of the district court] must promptly send a copy of the notice of appeal . . . to the clerk of the court of appeals named in the notice."); 28 U.S.C. § 1631 (if court determines that it lacks jurisdiction, it should transfer to any other court in which the action or appeal could have been brought). If transfer is appropriate, it is best for the Third Circuit to consider Heinz's motion to dismiss the appeal and the motion for leave to proceed in forma pauperis.

Upon consideration thereof,

IT IS ORDERED THAT:

Absent objection received within 21 days of the date of filing of this order, this appeal, the motion to dismiss, and the motion for leave to proceed in forma pauperis, shall be transferred to the Third Circuit pursuant to 28 U.S.C. § 1631.

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RIORDAN v. HJ HEINZ CO  
FOR THE COURT

JUN 17 2010

Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: Dennis Riordan  
Robert L. Byer, Esq.

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

**JUN 17 2010**

**JAN HORBALY**  
**CLERK**