

NOTE: This order is nonprecedential.

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

PREGIS CORPORATION,
Plaintiff-Cross Appellant,

v.

**DAVID J. KAPPOS, UNDERSECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR, UNITED STATES PATENT AND
TRADEMARK OFFICE AND UNITED STATES
PATENT AND TRADEMARK OFFICE,**
Defendants-Appellees,

AND

FREE-FLOW PACKAGING INTERNATIONAL, INC.,
Defendant-Appellant.

2010-1492, -1532

Appeals from the United States District Court for the
Eastern District of Virginia in case no. 09-CV-0467, Judge
Gerald Bruce Lee.

ON MOTION

Before BRYSON, *Circuit Judge.*

ORDER

Free-Flow Packaging International, Inc. moves to dismiss portions of Pregis Corporation's cross-appeal. Pregis opposes. Free-Flow replies. The parties also move to amend or extend the briefing schedule.

Pregis may cross-appeal from the trial court's adverse ruling regarding Pregis's counterclaim for a declaratory judgment of invalidity of U.S. Patent No. 7,361,397. In its opening brief, Pregis raises most arguments, other than arguments concerning the '397 patent, as arguments in support of the judgment. Acceptance of its additional arguments concerning whether it may maintain an alternative cause of action against the United States Patent and Trademark Office would appear, based upon the papers submitted, to potentially result in a different judgment such that cross-appeal may be appropriate. We deem its arguments concerning the 2005 Settlement to be arguments that would not increase Pregis's rights under the judgment of invalidity of most of the patents in suit, with the exception of the '397 patent which was held not invalid. Pregis of course should not raise in its reply brief any arguments in support of the judgment but may only raise arguments that would expand its rights under the judgment.

Accordingly,

IT IS ORDERED THAT:

(1) Free-Flow's motion to dismiss is denied without prejudice to the parties addressing the issues if appropriate in the briefs or at oral argument. A copy of this order shall be transmitted to the merits panel to inform the merits panel of the ruling on the motion, should the panel determine to revisit the issue after full briefing of the case.

(2) The other motions are granted in part. The United States Patent and Trademark Office's brief is due within 40 days from the date of filing of this order. Free-Flow's response/reply brief is due within 40 days of the date of service of the Director's brief. Pregis's reply brief is due within 14 days from the date of service of Free-Flow's response/reply brief.

FOR THE COURT

MAR 31 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: James W. Dabney, Esq.
Robert Francis Altherr, Jr., Esq.
Scott R. McIntosh, Esq.

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

MAR 31 2011

JAN HORBALY
CLERK