

NOTE: This order is nonprecedential.

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

ELI LILLY AND COMPANY,
Plaintiff-Appellant,

v.

ACTAVIS ELIZABETH LLC,
Defendant-Appellee,

and

SUN PHARMACEUTICAL INDUSTRIES LIMITED,
Defendant-Appellee,

and

SANDOZ INC.,
Defendant-Appellee,

and

MYLAN PHARMACEUTICALS INC.,
Defendant-Appellee,

and

APOTEX INC.,
Defendant-Appellee,

and

AUROBINDO PHARMA LTD.,
Defendant-Appellee,

and

TEVA PHARMACEUTICALS USA, INC.,
Defendant-Appellee.

2010-1500

Appeal from the United States District Court for the District of New Jersey in case no. 07-CV-3770, Judge Dennis M. Cavanaugh.

ON MOTION

PER CURIAM.

O R D E R

Eli Lilly and Company move for an injunction to prevent the defendants-appellees from launching generic versions of its patented drug, pending disposition of its appeal. The defendants-appellees oppose. Aurobindo Pharma Ltd. and Mylan Pharmaceuticals Inc. move for clarification of this court's order expediting the briefing schedule. Sun Pharmaceutical Industries, Ltd. requests judicial notice of various patents and patent applications that it asserts are publicly available.

The United States District Court for the District of New Jersey held that the defendants induced infringement of Eli Lilly's patent and that the patent was invalid for lack of enablement. Eli Lilly seeks an injunction, pending appeal, to prevent the introduction of generic

versions of its patented drug, pending disposition of this appeal.

To obtain a stay or injunction, pending appeal, a movant must establish a strong likelihood of success on the merits, or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor. *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987). In deciding whether to grant a stay, pending appeal, this court “assesses the movant’s chances of success on the merits and weighs the equities as they affect the parties and the public.” *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 835 F.2d 277, 278 (Fed. Cir. 1987); *see also Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511 (Fed. Cir. 1990).

Based on the motions papers submitted, and without prejudicing the ultimate disposition of this appeal by a merits panel, we determine that Eli Lilly has met its burden to obtain an injunction pending appeal.

Concerning the motion to clarify the order expediting the briefing schedule, the movants assert that due to recently filed cross-appeals the briefing schedule must be revised. Additionally, some of the defendants have informed this court that they have filed cross-appeals, seeking review of the district court’s infringement determination and review of the district court’s rejection of other grounds of invalidity. Because the defendants can make arguments concerning these issues as appellees, their cross-appeals are improper. Thus, we instruct the clerk of this court to dismiss those improperly filed cross-appeals when they are docketed.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for an injunction pending appeal is granted.

- (2) The request for judicial notice is granted.
- (3) The motion for clarification is denied.
- (4) When the cross-appeals are docketed, they will be dismissed for lack of jurisdiction.

For The Court

AUG 31 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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FILED
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THE FEDERAL CIRCUIT

AUG 31 2010

JAN HORBALY
CLERK