

NOTE: This order is nonprecedential.

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

THE MEDICINES COMPANY,
Plaintiff-Appellee,

v.

**DAVID J. KAPPOS, UNDERSECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR, UNITED STATES PATENT AND
TRADEMARK OFFICE, UNITED STATES PATENT
AND TRADEMARK OFFICE, MARGARET A.
HAMBURG, COMMISSIONER, UNITED STATES
FOOD AND DRUG ADMINISTRATION,
UNITED STATES FOOD AND DRUG
ADMINISTRATION, KATHLEEN SEBELIUS,
SECRETARY OF HEALTH AND HUMAN
SERVICES, AND DEPARTMENT OF HEALTH AND
HUMAN SERVICES,**
Defendants-Appellees,

v.

APP PHARMACEUTICALS, LLC,
Movant-Appellant.

2010-1534

Appeal from the United States District Court for the Eastern District of Virginia in case no. 10-CV-0286, Senior Judge Claude M. Hilton.

ON MOTION

Before LINN, *Circuit Judge*.

O R D E R

The Medicines Company (MDCO) moves to dismiss APP Pharmaceuticals, LLC's (APP) appeal or in the alternative moves for the court to bifurcate briefing on the the appeal. APP opposes. MDCO replies.

MDCO filed a complaint in the United States District Court for the Eastern District of Virginia challenging the United States Patent and Trademark Office's rejection of its application seeking a patent term extension. APP participated as amicus curiae in the district court. The district court granted MDCO's motion for summary judgment and ordered the Patent and Trademark Office to accept the application. After learning that the Patent and Trademark Office would not appeal the district court's judgment, APP moved to intervene as a defendant so that it could file an appeal from the judgment. The district court denied APP's motion to intervene. APP now appeals the district court's order denying APP's motion to intervene and seeks review of the judgment.

MDCO argues that APP does not have standing to appeal the judgment. The court deems it the better course for the parties to put their arguments concerning standing and any other issues in their briefs without directing that briefing be bifurcated.

Accordingly,

IT IS ORDERED THAT:

MDCO's motions are denied. APP's brief is due within 30 days of the date of filing of this order.

FOR THE COURT

FEB 02 2011

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Peter D. Keisler, Esq.
Jeanne E. Davidson, Esq.
Emily A. Evans, Esq.

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

FEB 02 2011

**JAN HORBALY
CLERK**