

NOTE: This order is nonprecedential.

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

**GENERAL PROTECHT GROUP, INC., (FORMERLY
KNOWN AS ZHEJIANG DONGZHENG ELECTRICAL Co.),
G-TECHT GLOBAL CORPORATION,
SECURELECTRIC CORPORATION, AND
WAREHOUSE-LIGHTING.COM, LLC,**
Plaintiffs-Appellees,

and

**CENTRAL PURCHASING, LLC AND HARBOR
FREIGHT TOOLS USA, INC.,**
Plaintiffs-Appellees,

v.

LEVITON MANUFACTURING CO., INC.,
Defendant-Appellant.

2011-1115

Appeal from the United States District Court for the
District of New Mexico in case no. 10-CV-1020, Judge
James O. Browning.

ON MOTION

Before RADER, *Chief Judge*, FRIEDMAN and LINN, *Circuit Judges*.

FRIEDMAN, *Circuit Judge*.

O R D E R

Leviton Manufacturing Co., Inc. moves for a stay, pending appeal, of the preliminary injunction entered by the United States District Court for the District of New Mexico. General Protecht Group, Inc. et al. and Harbor Freight Tools USA, Inc. et al. (collectively "General Protecht") oppose. Leviton replies.

In 2007, Leviton entered into a Confidential Settlement Agreement with various parties, including some of the plaintiffs in the present lawsuit. That agreement settled a previous infringement action brought in the United States District Court for the District of New Mexico. In September of 2010, Leviton filed complaints with the ITC and with the United States District Court for the Northern District of California, asserting infringement of two patents not asserted in the previous New Mexico lawsuit.

In response, General Protecht filed the underlying complaint in the New Mexico district court, seeking declaratory judgments of noninfringement, invalidity, and unenforceability of the two patents. General Protecht also sought damages for breach of the settlement agreement and an injunction to require that Leviton dismiss the recent complaints filed against the plaintiffs because they are related to the settlement agreement. General Protecht asserted, inter alia, a defense that the plaintiffs were granted an implied license by the settlement agree-

ment and that the settlement agreement required that all disputes arising under the settlement agreement be litigated in the New Mexico district court.

In the New Mexico district court, General Protecht moved for a preliminary injunction to require that Leviton dismiss its complaints asserting patent infringement against the plaintiffs. The district court reviewed the settlement agreement and granted the motion. The district court denied Leviton's motion to stay the injunction while Leviton pursued an appeal with this court. Leviton appealed the injunction and moves this court for a stay of the injunction, pending disposition of the appeal by this court. We recently expedited the briefing of this appeal and placed this appeal on the April 2011 argument calendar.

To obtain a stay, 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. *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511, 513 (Fed. Cir. 1990) (citing *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. DuPont de Nemours & Co. v. Phillips Petroleum Co.*, 835 F.2d 277, 278 (Fed. Cir. 1987); see also *Standard Havens Prods.*, 897 F.2d at 513.

Based on the arguments in the motions papers, and without prejudicing the ultimate disposition of this case by a merits panel, we determine that Leviton has not met its burden to obtain a stay of the injunction.

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

JAN 18 2011

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Mark J. Rosenberg, Esq.
William F. Long, Esq.
Larry L. Shatzer, Esq.

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

JAN 18 2011

JAN HORBALY
CLERK