

NOTE: This order is nonprecedential.

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

ANTHONY P. SCHMIDT, JR.,
Plaintiff-Appellant,

v.

**VERSACOMP, INC. (DOING BUSINESS AS TNT
LIFT SYSTEMS),
AND RICHARD ULRICH,**
Defendants-Cross Appellants.

2011-1295, -1341

Appeals from the United States District Court for the
Southern District of Florida in case no. 08-CV-60084,
Judge Adalberto Jordan.

ON MOTION

Before **LOURIE**, *Circuit Judge.*

O R D E R

Versacomp, Inc. and Richard Ulrich (Versacomp) move to dismiss Anthony P. Schmidt, Jr.'s appeal for failure to file a brief. Schmidt responds, and moves to transfer his appeal to the United States Court of Appeals for the Eleventh Circuit. Versacomp, Inc. replies.

In 2001, Schmidt brought a patent infringement suit against Versacomp in the United States District Court for the Southern District of Florida. The case was resolved by a settlement agreement approved by the district court, which retained jurisdiction to enforce its terms. In 2008, Schmidt brought this suit in the same court, asserting, inter alia, trademark infringement, and breach of the settlement agreement. After the district court entered final judgment in favor of Versacomp, Schmidt filed a notice of appeal with this court, and Versacomp filed a cross-appeal.

Schmidt's assertion that this court lacks jurisdiction and that the appeal should have been brought in the United States Court of Appeals for the Eleventh Circuit is without merit. Here, the original claim that serves as the basis for Schmidt's current claim asserting breach of a settlement agreement arose under the patent laws, 28 U.S.C § 1338, and the district court retained jurisdiction for purposes of enforcing the settlement agreement. Thus, the orders appealed from here arise under the patent laws and this court has jurisdiction over the appeals. See *Novamedix, Ltd. v. NDM Acquisition Corp.*, 166 F.3d 1177, 1180-81 (Fed. Cir. 1999).

In response to Versacomp's motion to dismiss, Schmidt states that he needs more time to file his brief. The court will therefore give Schmidt an extension of time to file his brief. Failure to file a brief within that time or to ask for an additional extension of time may result in the dismissal of his appeal for failure to prosecute. See *Julien v. Zeringue*, 864 F.2d 1572, 1574 (Fed. Cir. 1989).

Accordingly,

IT IS ORDERED THAT:

- (1) Schmidt's motion to transfer is denied.

(2) Versacomp's motion to dismiss is denied.

(3) Schmidt's brief is due within 40 days of the date of filing of this order.

FOR THE COURT

SEP 01 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Anthony P. Schmidt, Jr.
John F. Bradley, Esq.

s20

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

SEP 01 2011

JAN HORBALY
CLERK