

NOTE: This order is nonprecedential.

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

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**CIVIX-DDI, LLC,**  
*Plaintiff-Appellant,*

v.

**HOTELS.COM GP, LLC AND HOTELS.COM, L.P.,**  
*Defendants-Appellees.*

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2011-1599

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Appeal from the United States District Court for the Northern District of Illinois in case no. 05-CV-6869, Judge Amy J. St. Eve.

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**ON MOTION**

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

RADER, *Chief Judge.*

**ORDER**

Hotels.com GP, LLC et al. move to dismiss Civix-DDI, LLC's appeal for lack of jurisdiction. Civix oppose. Hotels.com replies.

Civix's appeal arises out of a suit it brought in the United States District Court for the Northern District of Illinois charging Hotels.com with infringement of 53 claims of four patents. Hotels.com asserted four counterclaims, including declaratory judgment of non-infringement, invalidity of the patents asserted, unenforceability of the patents asserted, and breach of contract.

On August 19, 2011, the district court granted summary judgment of non-infringement on the patent claims asserted. Despite not addressing Hotels.com's counterclaims, the district court ordered the clerk of the court to enter judgment on behalf of the defendant and terminate the case. On September 15, 2011, Civix filed its notice of appeal.

Civix does not dispute that the district court's order did not rule on the pending counterclaims, and that this court lacks jurisdiction over the case without such prior ruling. *See Pause Technology LLC v. TiVo Inc.*, 401 F.3d 1290, 1293-94 (Fed. Cir. 2005); *see also Catlin v. United States*, 324 U.S. 229, 233 (1945) (final judgment is a decision by the district court that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.").

Civix urges rather than dismissal that the court direct the parties to jointly request that the district court enter judgment *nunc pro tunc* under Fed. R. Civ. P. 54(b). We deem it the better course to dismiss the appeal without prejudice to Civix requesting the district court to enter judgment pursuant to Rule 54(b) on its own.

Accordingly,

IT IS ORDERED THAT:

(1) Hotel.com's motion is granted. The appeal is dismissed.

(2) Each side shall bear their own costs.

FOR THE COURT

MAY 01 2012

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Raymond P. Niro, Esq.  
Atif N. Khawaja, Esq.

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

MAY 01 2012

JAN HORBALY  
CLERK

ISSUED AS MANDATE: MAY 01 2012