

NOTE: This order is nonprecedential.

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

BROADCOM CORPORATION,
Plaintiff-Appellee,

v.

EMULEX CORPORATION,
Defendant-Appellant.

2012-1309

Appeal from the United States District Court for the
Central District of California in case no. 09-CV-1058,
Judge James V. Selna.

ON MOTION

Before LOURIE, SCHALL, and DYK, *Circuit Judges.*
LOURIE, *Circuit Judge.*

ORDER

Emulex Corporation moves for a stay, pending appeal,
of the permanent injunction of the United States District
Court for the Central District of California, entered on
March 16, 2012. Broadcom Corporation opposes. Emulex
replies.

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A stay of an injunction pending appeal is part of a court's "traditional equipment for the administration of justice." *Nken v. Holder*, 129 S.Ct. 1749, 1757 (2009) (citing *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9-10 (1942)). But a stay is an exercise of judicial discretion, not a matter of right. *Id.* at 1761. The party seeking a stay bears the burden of showing that the circumstances justify an exercise of that discretion based on consideration of four factors, the first two of which are the most critical: (1) whether the stay applicant has made a strong showing of likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Without prejudicing the ultimate disposition of this case by a merits panel, we conclude based upon the papers submitted that Emulex has not met its burden to obtain a stay pending appeal.

Accordingly,

IT IS ORDERED THAT:

The motion for a stay, pending appeal, of the injunction of the United States District Court for the Central District of California is denied.

FOR THE COURT

JUL 24 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Juanita R. Brooks, Esq.
William F. Lee, Esq.

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

JUL 24 2012

JAN HORBALY
CLERK