

NOTE: This order is nonprecedential.

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

CELSIS IN VITRO, INC.,
Plaintiff-Appellee,

v.

**CELLZDIRECT, INC. AND
INVITROGEN CORPORATION,**
Defendants-Appellants.

2010-1547

Appeal from the United States District Court for the Northern District of Illinois in case no. 10-CV-4053, Judge Milton I. Shadur.

ON MOTION

Before GAJARSA, SCHALL, and MOORE, *Circuit Judges.*
SCHALL, *Circuit Judge.*

ORDER

CellzDirect, Inc. and Invitrogen Corporation (CellzDirect) move for a stay, pending appeal, of the preliminary injunction issued by the United States District Court for the Northern District of Illinois. Celsis In Vitro, Inc.

(Celsis) opposes. CellzDirect replies. Celsis moves to strike CellzDirect's reply. CellzDirect opposes.

Celsis sued CellzDirect for infringement of its patent related to methods of making and using multicryopreserved hepatocytes. On September 7, 2010, the district court granted Celsis' motion for a preliminary injunction, finding that Celsis had established a likelihood of success on the merits of its patent infringement claim, that Celsis had shown it would be irreparably injured absent the injunction, and that the balance of hardships favored Celsis.

CellzDirect appeals the order granting the preliminary injunction and moves to stay the injunction pending disposition of its appeal by this court. 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. *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. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 835 F.2d 277, 278 (Fed. Cir. 1987). See also *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511 (Fed. Cir. 1990).

Based upon the papers submitted, and without prejudicing the ultimate disposition of this case by a merits panel, we determine that CellzDirect has not established the requisite likelihood of succeeding on the merits and thus has not met its burden to obtain a stay, pending appeal.

Accordingly,

IT IS ORDERED THAT:

(1) CellzDirect's motion to stay the preliminary injunction is denied. This court's temporary stay of the injunction is lifted.

(2) Celsis' motion to strike is denied.

(3) Any other pending motions are moot.

FOR THE COURT

DEC 08 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Jordan A. Sigale, Esq.
Francis M. Wikstrom, Esq.

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JAN HORBALY
CLERK