

NOTE: This order is nonprecedential.

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

**AVANIR PHARMACEUTICALS INC., AVANIR
HOLDING COMPANY, CENTER FOR
NEUROLOGICAL STUDY, AND DUANE MORRIS
LLP,**
Plaintiffs-Appellees,

v.

**PAR PHARMACEUTICAL INC. AND PAR
PHARMACEUTICAL COMPANIES INC.,**
Defendants-Appellants,

AND

ACTAVIS LLC,
Defendant-Appellee.

2014-1559

Appeal from the United States District Court for the District of Delaware in Consolidated Nos. 1:11-cv-00704-LPS, 1:11-cv-00705-LPS, 1:11-cv-00757-LPS, 1:11-cv-00758-LPS, 1:12-cv-00258-LPS, 1:12-cv-01122-LPS, 1:12-cv-01123-LPS, 1:12-cv-01124-LPS, 1:12-cv-01125-LPS, and 1:12-cv-01298-LPS, Judge Leonard P. Stark.

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ON MOTION

Before REYNA, BRYSON, and TARANTO, *Circuit Judges*.

BRYSON, *Circuit Judge*.

O R D E R

Appellants Par Pharmaceuticals, Inc. and Par Pharmaceuticals Companies, Inc. seek review of the decision of the United States District Court for the District of Delaware resolving some of the claims at issue in the case. Because the appeal is premature, we grant the motion submitted by appellees Avanir Pharmaceuticals, Inc. et al. to dismiss.

In response to Avanir's suit against Par for patent infringement, Par counterclaimed, seeking an order directing Avanir to delete one of the asserted patents from the Orange Book. 21 U.S.C. § 355(j)(5)(C)(ii)(I). After the district court disposed of the infringement and patent invalidity claims, it directed the parties to brief the delisting counterclaim, which still remains pending.

Section 1295(a)(1) of Title 28 authorizes this court to review "a final decision" of a district court in a patent infringement case, *i.e.*, a decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). A decision disposing of some claims in a multi-claim litigation does not constitute a final judgment unless the requirements of Rule 54(b) of the Federal Rules of Civil Procedure are met. The district court did not direct entry of judgment under Rule 54(b). Thus, Par's notice of appeal is clearly premature.

Accordingly,

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IT IS ORDERED THAT:

- (1) The motion to dismiss is granted.
- (2) Each side shall bear its own costs.

FOR THE COURT

/s/ Daniel E. O'Toole
Daniel E. O'Toole
Clerk of Court

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ISSUED AS A MANDATE: August 5, 2014