

NOTE: This order is nonprecedential.

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

HEALTHSTATE, LLC,
Plaintiff-Respondent

v.

UNITED STATES,
Defendant

ASM RESEARCH, LLC,
Defendant-Petitioner

2020-137

On Petition for Permission to Appeal pursuant to 28 U.S.C. Section 1292(d)(2) from the United States Court of Federal Claims in No. 1:18-cv-00034-DAT, Judge David A. Tapp.

ON PETITION

Before NEWMAN, LOURIE, and HUGHES, *Circuit Judges*.
PER CURIAM.

O R D E R

ASM Research, LLC petitions for permission to appeal pursuant to 28 U.S.C. § 1292(d)(2) from the interlocutory order denying its motion to dismiss certified by the United States Court of Federal Claims. HEALTHESTATE, LLC (“HeS”) opposes the petition. The United States submits a brief *amicus curiae* in response to this court’s August 10, 2020 order. ASM moves for leave to file a reply in support of its petition and a response to the United States’ brief, each of which HeS opposes.

Under the express language of § 1292(d)(2), this court has “discretion” whether to “permit an appeal” under the provision. *See Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 883 n.9 (1994) (noting “broad” discretion under the similar provision of 28 U.S.C. § 1292(b) for interlocutory appeals from United States district courts). Having considered the matter, we decline to permit interlocutory review here.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for permission to appeal is denied.
- (2) The motion for leave to file a reply is granted. The reply, ECF No. 18-2, is accepted for filing.
- (3) The motion for leave to file a response to the United States’ brief is granted. The response, ECF No. 25-2, is accepted for filing.

FOR THE COURT

September 29, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court