

NOTE: This order is nonprecedential.

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

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**MILLENNIUM DENTAL TECHNOLOGIES, INC.,**  
*Plaintiff-Appellant,*

v.

**FOTONA D.D.,**  
*Defendant-Appellee.*

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2010-1428

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Appeal from the United States District Court for the  
Central District of California in case no. 09-CV-1792,  
Judge Manuel L. Real.

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**ON MOTION**

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Before GAJARSA, MAYER, and PROST, *Circuit Judges.*  
GAJARSA, *Circuit Judge.*

**O R D E R**

Millennium Dental Technologies, Inc. (Millennium)  
moves for a stay, pending disposition of this appeal, of the  
district court's September 30, 2010 Order and February 7,

2011 contempt proceedings. Fotona D.D. (Fotona) opposes. <sup>1</sup> Millennium moves for leave to file a reply.

The power to stay 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)). A stay, however, is not a matter of right but instead an exercise of judicial discretion. *Nken*, 129 S.Ct at 1761. The party requesting 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 that he is likely to succeed 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. Braunschild*, 481 U.S. 770, 776 (1987).

Based on the arguments in the motions papers, and without prejudicing the ultimate disposition of this case by a merits panel, we determine that Millennium has met its burden to obtain a stay of the district court's September 30, 2010 Order enforcing a settlement agreement between the parties.

Accordingly,

IT IS ORDERED THAT:

The motions are granted.

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<sup>1</sup> This court previously issued an order stating "[t]he district court should hold in abeyance its contempt proceedings, pending this court's ruling on the motion to stay."

FOR THE COURT

JUN 22 2011

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: James S. Azadian, Esq.  
Philip J. Graves, Esq.

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

JUN 22 2011

JAN HORBALY  
CLERK