

NOTE: This order is nonprecedential.

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

**FRED HUTCHINSON CANCER RESEARCH
CENTER, ARGUS GENETICS, LLC,
AND MARS, INC.,
*Plaintiffs-Appellees,***

v.

**BIOPET VET LAB, INC. AND RADIO SYSTEMS
CORPORATION (DOING BUSINESS AS PETSAFE),
*Defendants-Appellants.***

2011-1249

Appeal from the United States District Court for the
Eastern District of Virginia in case no. 10-CV-616,
Judge Raymond A. Jackson.

ON MOTION

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

ORDER

BioPet Vet Lab, Inc. et al. (BioPet) move for a stay,
pending appeal, of the preliminary injunction entered by

the United States District Court for the Eastern District of Virginia. Fred Hutchinson Cancer Research Center et al. (FHCRC) oppose. BioPet replies.

In deciding whether to grant a stay or injunction, 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. Dupont 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). To prevail, a movant must establish a strong likelihood of success on the merits or, failing that, must demonstrate that it has a substantial case on the merits and that the harms factors militate in its favor. *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987).

Without prejudicing the ultimate disposition of this case by a merits panel, we conclude based upon the papers submitted that BioPet has not met its burden of showing the requisite likelihood of success to obtain a stay of the preliminary injunction pending appeal.

Accordingly,

IT IS ORDERED THAT:

The motion for a stay, pending appeal, of the preliminary injunction is denied.

FOR THE COURT

JUN 15 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Marc Louis Delflache, Esq.
Gregory N. Stillman, Esq.

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

JUN 15 2011

JAN HORBALY
CLERK