

NOTE: This disposition is nonprecedential.

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

THE COMPAK COMPANIES, LLC,
Plaintiff-Appellant,

v.

**JIMMIE L. JOHNSON, RON BOWEN,
PATPAK, INC., OLMARC PACKAGING COMPANY,
AND URBAN MINISTRIES, INC.,**
Defendants,

AND

**BRUCE CARLSON, DUOTECH HOLDINGS, INC.,
AND DUOTECH PACKAGING, LLC,**
Defendants-Cross Appellants.

2011-1457, -1483

Appeals from the United States District Court for the
Northern District of Illinois in case no. 03-CV-7427,
Senior Judge John F. Grady.

ON MOTION

Before REYNA, *Circuit Judge.*

ORDER

Bruce Carlson, DuoTech Holdings, Inc., and DuoTech Packaging, LLC (collectively "DuoTech") move, *inter alia*, for an order directing The Compak Companies, LLC ("Compak") to comply with this court's rules in preparing a joint appendix.* Compak did not file a response to this motion.

Because Compak failed to respond to this motion, we take as undisputed the averments of the motion, including: (1) Compak never served DuoTech a designation of materials for the appendix or provided DuoTech with a statement of issues presented for review as required, in the absence of agreement (which did not exist here) among the parties regarding the contents of the appendix; (2) Compak filed an appendix without consulting DuoTech and without regard to its obligation to include DuoTech's designations; (3) Compak's appendix improperly includes items that are not referenced in its brief; and (4) Compak's initial brief (as corrected) includes prohibited "block" citations such as references to trial exhibits (e.g., "PX10") without indicating specific page numbers. All these are violations of Federal Circuit Rule 30 and/or Federal Rule of Appellate Procedure 30. In addition, Compak's initial brief fails to properly reference the appendix (*i.e.* an appropriate citation might be "A206," not "Exhibit 12") as required by Federal Circuit Rule 28(f).

Furthermore, from this court's brief perusal of Compak's corrected appendix, it appears that at least some of the record (especially in Volume I) is not arranged in chronological order as required by Federal Rule of Appellate Procedure 30(d).

* In the same motion, DuoTech also sought an extension of time to file its brief, which was granted in a separate order.

Compliance with the court's rules for preparation of the appendix, including the notice requirements, is critical to the smooth and timely handling of an appeal. Indeed, an appellant's failure to do so "does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal." Fed. R. App. P. 3(a)(2).

Accordingly,

IT IS ORDERED THAT:

(1) DuoTech's motion is granted to the extent that Compak's initial brief and appendix are hereby rejected.

(2) Compak shall file a corrected version of its initial brief, with citations to the appendix that fully comply with Federal Circuit Rules 28(f) and 30(a)(2)(C) within 21 days of the date of this order. Failure to do so will result in dismissal of Compak's appeal for lack of prosecution. *See* Fed. R. App. P. 3(a)(2).

(3) Compak shall file a joint appendix, after the last brief is filed, that fully complies with Federal Circuit Rule 30 and Federal Rule of Appellate Procedure 30. Failure to do so will result in dismissal of Compak's appeal for lack of prosecution. *See* Fed. R. App. P. 3(a)(2).

(4) DuoTech may serve on Compak, within 14 days of the date of this order, a "counterdesignation of additional parts to be included in the appendix." Fed. Cir. R. 30(b)(2).

(5) If DuoTech so serves a counterdesignation, Compak shall include the counterdesignated pages in the joint appendix.

(6) DuoTech's opening brief is due within 40 days of service of Compak's corrected brief.

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FOR THE COURT

FEB 29 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: George J. Spathis, Esq.
Andrew J. Cohen, Esq.

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

FEB 29 2012

JAN HORBALY
CLERK