

NOTE: This order is nonprecedential.

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

NARTRON CORPORATION,
Plaintiff-Appellee,

v.

BORG INDAK, INC.,
Defendant-Appellant.

2012-1292

Appeal from the United States District Court for the Eastern District of Michigan in case no. 06-CV-10683, Senior Judge Lawrence P. Zatkoff.

ON MOTION

Before LOURIE, SCHALL and DYK, *Circuit Judges.*

LOURIE, *Circuit Judge.*

ORDER

Nartron Corporation moves to dismiss this appeal for lack of jurisdiction. Borg Indak, Inc. opposes. Nartron replies. Borg Indak seeks leave to file a surreply or alternatively to strike Nartron's reply. Nartron opposes.

Borg Indak seeks this court's review after the district court issued its order concluding Nartron's asserted patent was infringed, not invalid, and not unenforceable, and rejecting Borg Indak's other counterclaims and affirmative defenses. But the district court noted that none of the motions before it "addresse[d] damages or other requested relief" and treated the motions as seeking partial summary judgment. *Nartron Corp. v. Borg Indak, Inc.*, No. 06-10683 at 1-2, n.1 (E.D. Mich. Jan. 26, 2012).

Borg Indak contends that this court has authority to review the order pursuant to 28 U.S.C. § 1292(c)(2), which provides jurisdiction over appeals in patent cases that are "final except for an accounting." Here, however, Nartron sought an injunction in its complaint and the trial court has not yet resolved the dispute over injunctive relief. Because a claim for injunctive relief remains pending and there appears to be a dispute as to whether there is ongoing infringement, such that we cannot say that the district court denied injunctive relief *sub silentio*, this case is not final except for an accounting and we must dismiss the appeal. *See generally Stamicarbon, N.V. v. Escambia Chem Corp.*, 430 F.2d 920, 931 (5th Cir. 1970). Borg Indak may file a notice of appeal after the district court rules on the request for injunctive relief or enters final judgment.

Accordingly,

IT IS ORDERED THAT:

- (1) Nartron's motion to dismiss is granted.
- (2) Borg Indak's motion is granted to the extent that the court accepts the surreply.

FOR THE COURT

AUG 03 2012

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Frank A. Angileri, Esq.
Jeffrey A. Sadowski, Esq.

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Issued as a Mandate: AUG 03 2012

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

AUG 03 2012

JAN HORBALY
CLERK