

NOTE: This order is nonprecedential.

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

ALLERGAN, INC., AND DUKE UNIVERSITY,
Plaintiffs-Appellees,

v.

**WATSON PHARMACEUTICALS, INC.,
now known as Actavis, Inc.,
WATSON LABORATORIES, INC.,
AND WATSON PHARMA, INC.,**
Defendants-Appellants.

2013-1249

Appeal from the United States District Court for the
Middle District of North Carolina in No. 12-CV-0321,
Judge Catherine C. Eagles.

ON MOTION

Before LOURIE, BRYSON, AND MOORE, *Circuit Judges.*
LOURIE, *Circuit Judge.*

O R D E R

Allergan, Inc. et al. move to dismiss this appeal as premature. Apotex Inc. et al. and Watson Pharmaceuticals, Inc. oppose the motion.

Watson appeals from a February 4, 2013 order of the United States District Court for the Middle District of North Carolina, concluding that Watson infringed two of Allergan's patents and those patents were not invalid. At the time that order was issued, the district court had not entered judgment—and has still not entered judgment—as to Allergan's claims of infringement regarding two additional patents. Although the district court had also not acted on Allergan's request for injunctive relief at the time of the February 4, 2013 order, it has since granted Allergan a permanent injunction in this case, which the appellants have not yet appealed.

Absent final judgment or the issuance of a proper certification under Rule 54(b) of the Federal Rules of Civil Procedure, this court cannot exercise jurisdiction over the February 4, 2013 order. Accordingly, the court will dismiss the appeal for lack of jurisdiction, subject to reinstatement under the same docket number without the payment of an additional fee if, within 30 days of the date of this order, the district court either enters a final judgment or enters a proper certification under Rule 54(b) and, within 7 days of entry of judgment or certification, Watson files another notice of appeal.

Accordingly,

IT IS ORDERED THAT:

(1) The appeal is dismissed for lack of jurisdiction, subject to reinstatement under the same docket number without the payment of an additional filing fee if, within 30 days of the date of this order, the district court either enters final judgment or enters a proper certification under Rule 54(b).

ALLERGAN, INC. v. WATSON PHARMACEUTICALS, INC

3

(2) The parties are directed to immediately file a joint request for certification under Rule 54(b).

(3) Each side shall bear its own costs.

FOR THE COURT

/s/ Jan Horbaly
Jan Horbaly
Clerk

s19