

NOTE: This order is nonprecedential.

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

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**ALTANA PHARMA AG (NOW KNOWN AS NYCOMED  
GMBH) AND WYETH (NOW KNOWN AS WYETH LLC),**  
*Plaintiffs-Appellants,*

v.

**TEVA PHARMACEUTICALS USA, INC.,  
TEVA PHARMACEUTICAL INDUSTRIES, LTD.,  
TEVA PARENTAL MEDICINES, INC.,  
SUN PHARMACEUTICAL INDUSTRIES, LTD.,  
SUN PHARMACEUTICAL ADVANCED RESEARCH  
CENTRE, LTD.,  
AND SUN PHARMA GLOBAL, INC.,**  
*Defendants,*

and

**KUDCO IRELAND LIMITED AND SCHWARZ  
PHARMA, INC.,**  
*Defendants-Appellants.*

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2010-1491

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Appeal from the United States District Court for the  
District of New Jersey in consolidated case nos. 04-CV-  
2355, 05-CV-1966, 05-CV-3920, 06-CV-3672, and 08-CV-  
2877, Judge Jose L. Linares.

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**ON MOTION**

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Before LOURIE, MAYER, and DYK, *Circuit Judges*.  
DYK, *Circuit Judge*.

**O R D E R**

KUDco Ireland Limited and Schwarz Pharma, Inc. (KUDco) move to stay proceedings in this appeal pending district court action. The court considers whether KUDco's appeal should be dismissed as premature.

In this consolidated case, Altana Pharma AG and Wyeth sued the defendants for patent infringement. On July 16, 2010 and July 20, 2010, the United States District Court for the District of New Jersey issued an "Order & Final Judgment" against KUDco on its defenses and counterclaims. However, the district court has not entered a final judgment as to all the parties and all the issues, and has not certified the order against KUDco pursuant to Fed. R. Civ. P. 54(b).

Because there are still claims pending before the district court, we deem the better course is to dismiss the appeal as premature. *See Nystrom v. Trex Co.*, 339 F.3d 1347, 1350 (Fed. Cir. 2003). After the district court has adjudicated all the claims of all the parties, or entered a Rule 54(b) judgment, KUDco may file a timely appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) KUDco's motion is denied.
- (2) The appeal is dismissed.

(3) Each side shall bear its own costs.

(4) All other pending motions are denied as moot.

DEC 08 2010

Date

FOR THE COURT

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: William F. Lee, Esq.  
William R. Zimmerman, Esq.

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

DEC 08 2010

JAN HORBALY  
CLERK