

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

Miscellaneous Docket No. 922

CLS BANK INTERNATIONAL,

Plaintiff/Counterclaim Defendant-
Petitioner,

and

CLS SERVICES LTD.,

Counterclaim Defendant-Petitioner,

v.

ALICE CORPORATION PTY. LTD.,

Defendant/Counterclaim Plaintiff-
Respondent.

On Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(b)
from the United States District Court for the District of Columbia
in case no. 07-CV-974, Judge Rosemary M. Collyer.

ON PETITION FOR PERMISSION TO APPEAL

Before MAYER, BRYSON, and DYK, Circuit Judges.

DYK, Circuit Judge.

ORDER

CLS Bank International et al. (CLS Bank) petitions for permission to appeal an order certified by the United States District Court for the District of Columbia as one involving controlling issues of law as to which there is substantial ground for difference of opinion and for which an immediate appeal may materially advance the ultimate termination of the litigation. Alice Corporation Pty. Ltd. opposes. CLS Bank replies.

The district court granted CLS Bank's motion for certification for interlocutory appeal on two issues: (1) whether a system located entirely outside the United States can be "used" within the United States, and (2) whether a method performed outside the United States can be "sold" or "offered for sale" in the United States within the meaning of 35 U.S.C. § 271(a).

Ultimately, this court must exercise its own discretion in deciding whether it will grant permission to appeal interlocutory orders certified by a trial court. See In re Convertible Rowing Exerciser Patent Litigation, 903 F.2d 822 (Fed. Cir. 1990); 28 U.S.C. § 1292(c)(1). Given the posture of this case below, we determine that it would be more appropriate for the trial court to complete its proceedings rather than for us to review the issues at this interlocutory stage.

Accordingly,

IT IS ORDERED THAT:

The petition for permission to appeal is denied.

FOR THE COURT

FEB 02 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Steven J. Glassman, Esq.
Ryan T. Scarborough, Esq.

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

FEB 02 2010

JAN HORBALY
CLERK