

NOTE: This order is nonprecedential.

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

IN RE AGA MEDICAL CORPORATION,
Petitioner.

Miscellaneous Docket No. 125

On Petition for Writ of Mandamus to the United States District Court for the District of Delaware in case no. 11-CV-0539, Judge Jerome B. Simandle.

ON PETITION

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

PER CURIAM.

ORDER

AGA Medical Corporation (AGA) seeks a writ of mandamus directing the United States District Court for the District of Delaware to dismiss the underlying declaratory judgment action brought by W.L. Gore & Associates, Inc. (Gore). Gore opposes. AGA replies.

In denying AGA's motion to dismiss this action, the district court concluded that a substantial controversy existed because "AGA had, prior to commencement of the

suit, asserted rights to discovery in anticipation of amending its patent infringement complaint [in a related case between the parties], based on Gore's planned launch of the GSO product in Europe, which Gore claims it has the right to do without a license."

The remedy of mandamus is available only in extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power. *In re Calmar, Inc.*, 854 F.2d 461, 464 (Fed. Cir. 1998). AGA has not shown in its papers that the Delaware District Court clearly abused its discretion in denying its motion to dismiss. Moreover, AGA has not shown that meaningful review of this ruling will be lost absent immediate appellate review. See *Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 309 (1989) (a petitioner must establish that it has no other means of obtaining the relief desired). "[E]ven though on normal appeal, a court might find reversible error," *In re Cordis Corp.*, 769 F.2d 733, 737 (Fed. Cir. 1985), this court has made clear that ordinarily, the fact "a petitioner may suffer hardship, inconvenience, or an unusually complex trial does not provide a basis for a court to grant mandamus." *In re Roche Molecular Sys., Inc.*, 516 F.3d 1003, 1004 (Fed. Cir. 2008).

Accordingly,

IT IS ORDERED THAT:

The petition for a writ of mandamus is denied.

FOR THE COURT

JUL 20 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

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

JUL 20 2012

JAN HORBALY
CLERK

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Clerk, United States District Court for the District of
Delaware

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