

DNJ Judge Denies Stay of Re-Trial on Patent Damages Pending Resolution of Interlocutory Appeal on Issues of Liability

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In a prior alert, we discussed Senior U.S. District Judge Stanley R. Chesler's decision to [grant a new trial in a patent infringement case](#) involving plug-and-play technology for televisions, subject to certain limitations on what evidence may be presented at trial on the issue of damages. Since that time, defendant LG Electronics moved to stay the re-trial on damages, and related proceedings, pending resolution of an interlocutory appeal on liability. In a recently issued opinion, Judge Chesler denied LG's motion.

The threshold issue before the Court on LG's motion was which standard of review should apply to LG's request for a stay. LG argued the following standard applied:

(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.

Horizon Pharma, Inc. v. Dr. Reddy's Labs., Inc., 2017 WL 3704614, at *2 (D.N.J. Aug. 25, 2017).

By contrast, plaintiff Mondis Technology Ltd. argued the following standard should govern:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

Judge Chesler sided with LG, concluding that the standard of review set forth in *Horizon* applied.

First, the *Hilton* standard states that it applies to “appeals to stay an order pending appeal.” *Hilton*, 481 U.S. at 776 (emphasis added). Judge Chesler noted, however, that LG was not asking to stay an order pending appeal of that very order. *Mondis Tech. Ltd. v. LG Electronics, Inc., et al.*, 15-4431 (D.N.J. June 11, 2020), Op. at 2. Next, Judge Chesler looked to the Supreme Court's decision in *Nken v. Holder*, 556 U.S. 418, 426 (2009), which examines the application of *Hilton*. Here, Judge Chesler determined the *Hilton* test applies “in circumstances in which what

is at issue is whether to stay an order which is under review.” *Id.* The circumstances underlying LG’s motion, however, are different -- LG is seeking a stay pending an appeal on issues of liability, not on issues of damages. In other words, “[t]he review of the judgment of liability has potential implications for the availability of damages, but the legality of a re-trial on damages is not the focus of the interlocutory appeal.” Op. at 3. As a result, Judge Chesler found the *Hilton* standard does not apply to LG’s motion.

Instead, Judge Chesler applied the *Horizon* standard of review to LG’s motion, “guided by the fundamental principles stated in” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936):

the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.

Op. at 3. Under this standard, LG could not demonstrate a stay was warranted.

First, Judge Chesler observed that a stay will not simplify the issues in question or the re-trial on damages. If the Federal Circuit affirms on liability, the damages issues on re-trial will likely be the same. Op. at 4-5. Second, a stay will prejudice Mondis inasmuch as it will take the Federal Circuit approximately sixteen months to render a decision, and such a delay in the payment of damages harms Mondis. Op. at 5. Finally, Judge Chesler found the third element is the only one that weighed in favor of granting a stay: supplementary discovery had not begun and no date for a re-trial had been set (and, in light of the COVID-19 crises, it was unknown when a re-trial by jury would even be permitted). *Id.* Nevertheless, after weighing all the competing considerations, Judge Chesler decided that the cost to the parties to complete supplementary discovery and preparations for re-trial was likely to be minimal, while the benefit of being ready for re-trial (and reducing the wait for Mondis to receive the damages to which it was entitled), more than outweighed that minimal cost. Op. at 6.

A full copy of Judge Chesler’s June 11, 2020 is attached.