

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PROMEGA CORPORATION,

Plaintiff,

and

MAX-PLANCK-GESELLSCHAFT zur
FORDERUNG der WISSENSCHAFTEN E.V.,

Involuntary Plaintiff,

v.

LIFE TECHNOLOGIES CORPORATION,
INVITROGEN IP HOLDINGS, INC. and
APPLIED BIOSYSTEMS, LLC,

Defendants.

ORDER

10-cv-281-bbc

This case for patent infringement is back in this court on remand from the Court of Appeals for the Federal Circuit. Promega Corp. v. Life Technologies Corp., 773 F.3d 1338 (Fed. Cir. 2014). The question before the court is whether the case should be stayed while defendants' petition for a writ of certiorari is pending before the Supreme Court. I agree with defendants that it should.

If the Supreme Court were to grant defendants' petition, it is possible that the Court's decision could negate any developments of the case in this court and require yet another round of proceedings. Particularly because the parties cannot even agree on the scope of the

remand, it makes sense to wait a short time to allow the Supreme Court to render its decision to avoid the possibility of wasted effort.

Of course, the chances are slim that the Supreme Court will accept review of any particular case, including this one. However, the chances in this case may be higher than some other cases in light of the dissenting opinion in which Judge Probst argued that the majority was disregarding Supreme Court precedent on an issue of statutory interpretation. In any event, plaintiff does not identify any prejudice that it will suffer while waiting for the Supreme Court's decision, so I see no reason to proceed until the certiorari petition is resolved.

ORDER

IT IS ORDERED that the motion to stay filed by defendants Life Technologies Corporation, Invitrogen IP Holdings, Inc. and Applied Biosystems, LLC, dkt. #805, is GRANTED. This case is STAYED pending a decision from the United States Supreme Court on defendants' petition for a writ of certiorari. Defendants are directed to notify this court within seven days of the Supreme Court's decision on the petition.

Entered this 14th day of July, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge