NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

JUMP ROPE SYSTEMS, LLC,
Plaintiff-Appellant

v.

COULTER VENTURES, LLC, dba Rogue Fitness,
Defendant-Appellee

2022-1624

Appeal from the United States District Court for the Southern District of Ohio in No. 2:18-cv-00731-MHW-CMV, Judge Michael H. Watson.

ON MOTION

Before PROST, BRYSON, and STOLL, *Circuit Judges.*

PER CURIAM.

ORDER

(Filed Jun. 28, 2022)

The appellant Jump Rope Systems, LLC moves unopposed for summary affirmance of the district court's judgment, conceding that, under existing caselaw, the

outcome is controlled by this court's earlier decision in *Jump Rope Systems, LLC v. Coulter Ventures, LLC*, Nos. 20-2284, 2020-2285, 2021 WL 4592276 (Fed. Cir. 2021) (affirming the Patent Trial and Appeal Board's unpatentability determination for all asserted claims).

Accordingly,

IT IS ORDERED THAT:

(1) The motion for summary affirmance is granted.

(2) Each side shall bear its own costs.

FOR THE COURT

June 28, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

ISSUED AS A MANDATE: June 28, 2022

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

JUMP ROPE SYSTEMS, LLC,
Plaintiff-Appellant

v.

COULTER VENTURES, LLC, dba Rogue Fitness,
Defendant-Appellee

2022-1624

Appeal from the United States District Court for the Southern District of Ohio in No. 2:18-cv-00731-MHW-CMV, Judge Michael H. Watson.

ON PETITION FOR EN BANC HEARING

Before MOORE, *Chief Judge*, NEWMAN, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

ORDER

(Filed May 5, 2022)

Jump Rope Systems, LLC filed a petition for en banc hearing. The petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for en banc hearing is denied.

FOR THE COURT

May 5, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jump Rope Systems, LLC,

Plaintiff,

v.

Coulter Ventures, LLC, *doing business as* Rogue Fitness,

Defendant.

Case No. 2:18-cv-731

Judge Michael H. Watson

Magistrate Judge Vascura

CONSENT JUDGMENT

(Filed Mar. 9, 2022)

The parties recently filed a joint status report. ECF No. 46. Therein, they represented that, based on a recent ruling and mandate from the Federal Circuit, they believed that *XY, LLC v. Trans* Ova *Genetics, L.C.*, 890 F. 3d. 1282, 1294 (Fed. Cir. 2018) "is controlling if not distinguished and very likely requires dismissal" of this action. *Id.* at 2. That said, Plaintiff disagrees with *XY, LLC*, and thinks it is inapposite, while Defendant believes it is dispositive of this case. *Id.* In the interest of efficiency, however, the parties have agreed to a proposed judgment entry, which Plaintiff plans to appeal. *Id.*

The Sixth Circuit has previously instructed that there is a "long-standing rule that a party may not appeal a judgment to which it consented." *Innovation Ventures, LLC v. Custom Nutrition Lab'ys, LLC*, 912

F.3d 316, 327 (6th Cir. 2018) (citation omitted). As with many rules, of course, there are exceptions. *See*, *e.g.*, *id.* at 327-32. Plaintiff, apparently, believes this to be one of those exceptions. The Court has no opinion as to whether an appeal will be possible in this case.

On stipulation of the parties, the Court **ENTERS JUDGMENT** for Defendant on all claims, Plaintiff takes nothing as against Defendant in this action. Each party shall bear its own costs and fees.

IT IS SO ORDERED.

/s/ *Michael H. Watson*
MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JUMP ROPE SYSTEMS, LLC, Plaintiff, v. COULTER VENTURES, LLC, Defendant.	Civil Action No. 2:18-cv-00731 Judge Michael H. Watson Magistrate Judge Chelsey M. Vascura

FINAL JOINT STATUS REPORT

(Filed Feb. 8, 2022)

Pursuant to the Court's April 9, 2021 Order, ECF No. 40, the Parties hereby notify the Court of the status of the *inter partes* review ("IPR") proceedings for U.S. Patent Nos. 7,789,809 and 8,136,208, owned by Plaintiff Jump Rope Systems, LLC ("JRS") and asserted in this action, and the related appeals. (*See* PTAB Case Nos. IPR2019-00586, IPR2019-00587.)

On July 17, 2020, the Patent Trial and Appeal Board issued Final Written Decisions holding all claims of U.S. Patent Nos. 7,789,809 and 8,136,208 unpatentable. JRS filed notices of appeal on September 14, 2020. (*See* Federal Circuit Case Nos. 20-2284, 20-2285.)

On October 6, 2021, the Federal Circuit Court of Appeals affirmed the judgments of the Final Written Decisions that held all claims of the asserted patents

were unpatentable. On November 12, 2021, the Federal Circuit issued a mandate to the United States Patent and Trademark Office.

The parties disagree as to how this case should be resolved. While JRS disagrees with the reasoning and applicability of the decision of the Federal Circuit in *XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282, 1294 (Fed. Cir. 2018), JRS acknowledges that this authority is controlling if not distinguished and very likely requires dismissal. Defendant asserts that the *XY* decision is controlling and mandates disposition of this action in Defendant's favor. All parties seek an expeditious and efficient path forward in this Court with due respect for the rule of law. To that end, they ultimately have agreed to submit a stipulated proposed Judgment Entry, which JRS intends to appeal.

PLAINTIFF'S POSITION

JRS respectfully cannot unreservedly agree to dismissal of this case with or without prejudice. In taking this position, JRS recognizes that current panel-level Federal Circuit authority likely requires immediate entry of judgment for Defendant. In *XY, LLC v. Trans Ova Genetics, L.C.,* 890 F.3d 1282, 1294 (Fed. Cir. 2018), the Federal Court imposed an "immediate issue-preclusive effect" of an IPR unpatentability finding to district court litigation, upon affirmance of the IPR decision by the Federal Circuit. JRS understands that this holding binds this Court to accept Defendant's argument for immediate entry of judgment on collateral

estoppel grounds absent a clear argument for distinguishing the applicability of the case here.

Notwithstanding this precedent, JRS also asserts that controlling Supreme Court authority trumps the Federal Circuit decision in *XY* and therefore it cannot agree to the result inevitably compelled by the *XY* decision. JRS does not take this position without careful consideration and legal analysis.

Supporting JRS's contention that dismissal is not compelled here, Judge Newman strenuously dissented in *XY*. *Id.* at 1298-1302. Judge Newman pointed to Restatement (Second) of Judgments principles and the Supreme Court's decision in *Blonder-Tongue Labs., Inc. v. Univ. of Illinois Fndn.*, 402 U.S. 313 (1971) (among other authorities) that should have foreclosed automatic application of collateral estoppel in this exact situation. As she noted, "weighing heavily against estoppel" were "the different standards of validity in the PTAB and the district court, the different burdens of proof, and the different standards of appellate review in this court, [all of which mean that] inconsistent decisions can be reached in the PTAB and the district court." Id. at 1300-01.

JRS respectfully asserts that Judge Newman's approach is better reasoned than the majority opinion and in step with the referenced Supreme Court authority. If Judge Newman's thoughtful analysis was followed or *XY* distinguished, JRS would be entitled to prove to this Court why collateral estoppel should not

bar the claims in the Complaint. However, *XY* remains controlling law for now.

For the record, JRS believes there are good faith reasons to distinguish *XY*. But JRS will not pursue that path with this Court after Defendant called a decision from Judge Graham to its attention. In *Proctor v. Edwards Management Group*, No. 2:07-cv-839, 2010 U.S. Dist. LEXIS 130750, at *10-11 (S.D. Ohio Nov. 29, 2010), Judge Graham ruled sanctions may be appropriate if a party requests a ruling contrary to clear precedent. While the facts are inapposite to this matter, Judge Graham nonetheless stated:

> Rule 11 sanctions certainly should be imposed for the filing of motions and causes of action plainly foreclosed by long-standing and authoritative precedent and for actions brought in spite of the obvious preclusive effect of prior litigation involving the same party"); McNeill v. Wayne County, No. 08-10658, 2009 U.S. Dist. LEXIS 23406 (E.D. Mich. Mar. 23, 2009) (it would be unreasonable (and therefore sanctionable) conduct for plaintiff to seek to relitigate claims asserted in a prior suit); Isley v. Ford Motor Co., 371 F. Supp. 2d. 912, 917 (E.D. Mich 2005) (sanctions appropriate where plaintiff brought claim clearly barred by collateral estoppel)."

To avoid the conundrum of making an effort to distinguish *XY* under threat of sanctions if the Court determines that authority is instead controlling, and to avoid any appearance of wasting resources of the Court or a party, JRS instead stipulates to the attached

proposed Judgement Entry as the inevitable, albeit unfortunate, result of the *XY* decision. To preserve all rights on appeal, JRS does not agree to this proposed Judgment Entry, but stipulates the Court is bound to enter it.

JRS further acknowledges, on appeal, the Federal Circuit itself will be bound by the *XY* opinion until, and if, that Court agrees to hear this case *en banc*. *Newell Cos. v. Kenny Mfg. Co.*, 864 F.2 757, 765 (Fed. Cir. 1988). Accordingly, JRS intends to seek *en banc* review and remand on appeal. Barring that relief, JRS will then seek Supreme Court review by filing a Petition for Writ of Certiorari.

At the bottom line, JRS respects the rule of law and the doctrines of hierarchal precedent and *stare decisis*. But for the reasons eloquently stated by a distinguished panel jurist in the *XY* dissent and counsels' independent analysis of the Supreme Court's controlling authority in *Blonder-Tongue Labs.*, JRS maintains a good faith opposition to dismissal at this juncture in this case on the ground that the legal rule announced in *XY* should be distinguished or modified.

DEFENDANT'S POSITION

The Patent Trial & Appeal Board ("PTAB") concluded that all asserted claims from Plaintiff JRS's U.S. Patent Nos. 7,789,809 and 8,136,208 are unpatentable. (PTAB Case Nos. IPR2019-00586 and IPR2019-00587). The U.S. Court of Appeals for the Federal Circuit has now affirmed those decisions, issued its mandate, and

JRS has abandoned any further appeal of those decisions to the Supreme Court. Therefore, each and every claim of JRS's asserted patents has been finally adjudged to be unpatentable.

When the Federal Circuit affirms a finding of unpatentability by the PTAB, "[t]hat affirmance . . . has an immediate issue-preclusive effect on any pending or co-pending actions involving the patent." *XY*, 890 F.3d at 1294-95. JRS, "having been afforded the opportunity to exhaust his remedy of appeal from a holding of invalidity, has had his 'day in court,'" and Defendant Coulter Ventures, LLC "should not have to continue defending a suit for infringement of an adjudged invalid patent." *Id.* at 1294 (cleaned up). This "straightforward application of this court's and Supreme Court precedent" now moots this action. *Id.* ("This court has long applied the Supreme Court's holding in *Blonder-Tongue* to apply collateral estoppel in mooting pending district court findings of no invalidity based on intervening final decisions of patent invalidity.") (citing *Mendenhall v. Barber-Greene Co.*, 26 F.3d 1573, 1576 (Fed. Cir. 1994); *Dana Corp. v. NOK, Inc.*, 882 F.2d 505, 507-08 (Fed. Cir. 1989); *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 135 S.Ct. 1293, 1303, 191 L.Ed.2d 222 (2015); *MaxLinear, Inc. v. CF CRESPE LLC*, 880 F.3d 1373, 1376 (Fed. Cir. 2018)).

JRS acknowledges that *XY* is binding precedent and there is no question that collateral estoppel, under *XY* and other authority, applies to preclude JRS's asserted claims here: JRS had a full and fair opportunity to litigate validity of the asserted patents, these issues

were actually decided against JRS, and were essential to the judgments against it. *See*, *e.g.*, *XY*, 890 F.3d at 1294. Moreover, JRS can no longer dispute that all claims of the asserted '809 and '208 patents are finally determined to be unpatentable and must be cancelled by the Patent Office pursuant to 35 U.S.C. § 318(b), further mooting this action. Therefore, this case must now end. The Court should enter the proposed judgment of the parties in favor of Defendant.

Further, Defendant submits that any appeal of judgment in its favor in this action is frivolous and futile, and Defendant reserves all rights, remedies, and defenses against Plaintiff if any such appeal is pursued.

Dated: February 8, 2022

Respectfully submitted,

/s/ James A. Dyer	/s/ Louis DiSanto by /s/ James A. Dyer per 02/08/22 email authority
Attorney for Plaintiff:	Attorney for Defendant:
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on February 8, 2022, a true and correct copy of the foregoing document was served on all counsel of record by the Court's CM/ECF system, which will send notification to all attorneys registered to receive service.

/s/ James A. Dyer
James A. Dyer

No. 22-1624

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JUMP ROPE SYSTEMS, LLC,

Plaintiff-Appellant,

v.

COULTER VENTURES, LLC,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Ohio

APPELLANT JUMP ROPE SYSTEMS, LLC'S UNOPPOSED MOTION FOR SUMMARY AFFIRMANCE

(Filed May 19, 2022)

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FORM 9. Certificate of Interest **Form 9 (p. 1)**
July 2020

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number	22-1624
Short Case Caption	Jump Rope Systems, LLC v. Coulter Ventures, LLC
Filing Party/Entity	Jump Rope Systems, LLC

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 05/19/2022 Signature: /s/Robert P. Greenspoon

Name: Robert P. Greenspoon

FORM 9. Certificate of Interest **Form 9 (p. 2)**
July 2020

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/ Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/ Not Applicable
Jump Rope Systems, LLC		

☐ Additional pages attached

FORM 9. Certificate of Interest **Form 9 (p. 3)**
July 2020

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☐ Additional pages attached

Sebaly Shillito & Dyer	LIMPUS + LIMPUS, PC	James A. Dyer
Daniel J. Donnellon	Christopher L. Limpus	

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☑ None/Not Applicable ☐ Additional pages attached

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6). ☑ None/Not Applicable ☐ Additional pages attached		

Appellant Jump Rope Systems, LLC ("JRS"), unopposed by Appellee, respectfully moves for summary affirmance in this appeal based on this Court's decision in *XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282 (Fed. Cir. 2018). In support thereof, JRS states as follows:

BACKGROUND

This case involves a challenge to *XY, LLC*—a prior 2-1 panel precedent that, until overruled by this Court of the Supreme Court, controls disposition of the issues in this appeal. JRS brought suit against Appellee in district court (No. 2:18-cv-00731-MHW-CMV, S.D. Ohio), alleging infringement of two JRS patents. Appellee subsequently sought inter partes review at the Patent Trial and Appeal Board, resulting in a stay of district court proceedings. After this Court affirmed the PTAB's unpatentability decisions, the parties filed a Joint Status Report reflecting agreement that *XY,*

LLC holds that the collateral estoppel effect of the PTAB rulings forecloses JRS from prevailing in its district court infringement action. JRS stated its intention to seek *en banc* review in this Court of that *XY, LLC* holding.

After the district court entered the stipulated form of judgment, JRS sought initial *en banc* review in this Court as indicated. On May 5, 2022, this Court denied *en banc* initial hearing. The parties subsequently conferred and agree that no purpose would be served by proceeding to the panel phase, in view of the prior-panel rule requiring a future panel in this case to follow the 2-1 *XY, LLC* holding.

DISCUSSION

While JRS strongly disagrees with the Court's decision in *XY, LLC* and with the denial of initial *en banc* hearing, out of respect for the rule of law, JRS concedes that it has now exhausted its opportunities at this Court for meaningful review of the district court's judgment. JRS concedes that because the issue in this appeal is identical to the collateral estoppel issue decided in *XY, LLC*, summary affirmance is appropriate. *See United States v. Fortner*, 455 F.3d 752, 754 (7th Cir. 2006) ("[S]ummary affirmance may be appropriate when a recent appellate decision directly resolves the appeal."). In the interests of preserving the Court's and the parties' resources, JRS respectfully requests that this Court grant summary affirmance of the district court's judgment.

In making this request, JRS reserves and preserves all rights to subsequent review, and specifically states its intention to seek Supreme Court review of the collateral estoppel holding of *XY, LLC* (and thus of this case's underlying judgment). For example, under the rationale of the *XY, LLC* dissent, JRS contends that there should not be collateral estoppel. Under the dissent's rationale, JRS should be entitled to put Appellee to its proofs about any contention of invalidity under the Article III court's clear and convincing standard of proof.

Appellee does not oppose this motion, but does not agree with Appellant's characterizations of the litigation and reserves all rights, remedies, and defenses.

Respectfully submitted,

Date: May 19, 2022

/s/ Robert P. Greenspoon

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Attorney for Plaintiff-Appellant
Jump Rope Systems, LLC

FORM 19. Certificate of Compliance with Type-Volume Limitations **Form 19 July 2020**

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number 22-1624

Short Case Caption Jump Rope Systems, LLC v. Coulter Ventures, LLC

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- ☑ the filing has been prepared using a proportionally-spaced typeface and includes 475 words.
- ☐ the filing has been prepared using a monospaced typeface and includes _____ lines of text.
- ☐ the filing contains _____ pages / _____ words / _____ lines of text, which does not

exceed the maximum authorized by this court's order (ECF No. _____).

Date: 05/19/2022 Signature: /s/Robert P. Greenspoon

Name: Robert P. Greenspoon