

FARNAN, District Judge

Presently before the Court is a Motion To Vacate (D.I. 243) filed by Plaintiff, PolyMASC Pharmaceuticals ("PolyMASC"). For the following reasons, the Court will deny the motion.

I. BACKGROUND

In December of 2002, the Court issued two Memorandum Orders (D.I. 223, 225) construing various terms in U.S. Patent No. 6,132,763 (the "'763 patent"). Based on these claim constructions, the Court concluded that Defendant Alza Corporation ("Alza") did not infringe the '763 patent and granted summary judgment in favor of Alza. PolyMASC filed an appeal to the Federal Circuit, but prior to a decision on the merits the parties entered into a License and Settlement Agreement on July 3, 2003 (the "Settlement Agreement"), and stipulated to dismissal of the appeal. By its Motion, PolyMASC requests the Court to vacate its Memorandum Orders construing the terms in the '763 patent.

II. THE PARTIES' CONTENTIONS

PolyMASC contends that the Court should vacate its claim construction orders because the parties settled their disputes and no controversy remains concerning the claim constructions. PolyMASC further contends that the Court should vacate its claim construction orders because there was no appellate review as a result of the Settlement Agreement.

Alza contends that the Court should deny PolyMASC's motion to vacate because withdrawal of district court orders is proper only in exceptional circumstances, none of which are present here. Further, Alza contends that Supreme Court precedent provides that vacating a judgment is not justified merely because the parties have reached a settlement. Alza also contends that the Court lacks subject matter jurisdiction to take the action requested by PolyMASC, because as PolyMASC concedes, there is no remaining controversy between the parties.

III. DISCUSSION

A case becomes moot when the party seeking relief voluntarily terminates the controversy. Aqua Marine Supply v. Aim Machining, Inc., 247 F.3d 1216, 1220 (Fed. Cir. 2001). As a consequence of the Settlement Agreement entered into by the parties, this case is moot. Where, as here, a case is moot, the party seeking relief from judgment has the burden of demonstrating "equitable entitlement to the extraordinary remedy of vacatur." U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship, 513 U.S. 18, 26 (1994). Mootness by reason of settlement does not justify vacatur absent "exceptional circumstances." Id. at 29. The primary rationale for this principle is that the party who seeks the relief has "caused the mootness by voluntary action." Id. at 24 (citing Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft, 239 U.S. 466, 478 (1916)). Thus, "[t]he

denial of vacatur is merely one application of the principle that '[a] suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks.'" Id. at 25 (quoting Sanders v. United States, 373 U.S. 1, 17 (1963) (alteration in original)).

Examining the circumstances of this case in light of the applicable law, the Court concludes that PolyMASC has not proven "exceptional circumstance" in the context of the parties' settlement warranting vacatur. The fact that the parties' settlement will preclude appellate review does not justify vacatur of the Court's Orders, because PolyMASC voluntarily abandoned its legal right to appeal and mooted this action by entering into the Settlement Agreement. Id. at 24. Accordingly, the Court concludes that PolyMASC has not demonstrated extraordinary circumstances that would compel the Court to depart from the general rule against vacatur, and therefore, the Court will deny PolyMASC's motion to vacate.

An appropriate Order will be entered.

