

NOTE: This order is nonprecedential.

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

DAVID A. POTTS, GEOMATRIX, LLC,
Plaintiffs-Appellants

v.

CUR-TECH LLC,
Defendant-Appellee

2020-1471

Appeal from the United States District Court for the District of Connecticut in No. 3:09-cv-00065-JBA, Senior Judge Janet Bond Arterton.

ON MOTION

Before O'MALLEY, WALLACH, and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

ORDER

Cur-Tech LLC moves to dismiss. David A. Potts and Geomatrix, LLC (collectively, "Geomatrix") oppose.

The district court entered judgment in favor of Cur-Tech in this patent infringement suit in October 2012.

After receiving an extension, Geomatrix timely filed its notice of appeal on September 10, 2013. Due to an unexplained delay, the notice of appeal was not transmitted by the district court to this court until February 11, 2020, nearly six and a half years after it was filed.

This court has authority to dismiss an appeal for failure to prosecute. *See Julien v. Zeringue*, 864 F.2d 1572, 1575 (Fed. Cir. 1989) (“If the judicial process is to function effectively, we must retain the ability to control our docket and dismiss cases where counsel fail to perform their duties.”); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962) (noting inherent power of courts “to clear their calendars of cases that have remained dormant because of the inaction or dilatoriness of the parties seeking relief”).

In these very unusual circumstances, dismissal for failure to prosecute is warranted. To begin, the delay of significant duration here is attributable to Geomatrix allowing the notice of appeal to languish on the district court’s docket for six plus years without any attempt to contact the district court’s clerk to inquire as to its status or to request that the notice be transmitted. That Geomatrix may not have violated any rules is of no moment; this clearly amounts to inaction and dilatoriness.

Moreover, Cur-Tech has demonstrated that it is likely to be economically and evidentiarily prejudiced from that significant delay. Its motion points out that, since the judgment, it has made “substantial investments of time, resources and money . . . into developing” the accused products, and would “stand[] to lose hundreds of thousands of dollars of investments it would not have made if the appeal proceeds.” Cur-Tech further points out that any remand for trial now “would involve witnesses trying to testify about long-ago and long-forgotten events.”

Accordingly,

IT IS ORDERED THAT:

POTTS v. CUR-TECH LLC

3

- (1) The motion to dismiss is granted.
- (2) Each side shall bear its own costs.

FOR THE COURT

May 19, 2020
Date

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

s24

ISSUED AS A MANDATE: May 19, 2020