

NOTE: This order is nonprecedential.

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

DRISCOLL'S, INC., DRISCOLL'S OF EUROPE B.V.,
Plaintiffs-Appellants

v.

**CALIFORNIA BERRY CULTIVARS, LLC, DOUGLAS
SHAW,**
Defendants-Appellees

2025-1747

Appeal from the United States District Court for the
Eastern District of California in No. 2:19-cv-00493-TLN-
CKD, Judge Troy L. Nunley.

ON MOTION

Before REYNA, MAYER, and CHEN, *Circuit Judges*.

PER CURIAM.

O R D E R

Driscoll's, Inc. and Driscoll's of Europe B.V. (collectively, "Driscoll's") move to deactivate this appeal pending the district court's entry of final judgment. ECF No. 5. We dismiss the appeal for lack of jurisdiction.

Driscoll's sued California Berry Cultivars, LLC and Douglas Shaw (collectively, "CBC") for infringement of three patents. CBC filed counterclaims related to non-infringement and invalidity. The district court granted CBC's motion for summary judgment as to Driscoll's claims and entered judgment to that effect. There is no dispute that CBC's invalidity counterclaims remain pending, and the district court has ordered briefing on dispositive motions. ECF No. 5 at 2.

In general, this court only has jurisdiction over a "final decision" of a district court. 28 U.S.C. § 1295(a). Because CBC's invalidity counterclaims remain unadjudicated, there has been no final judgment. *See Nystrom v. Trex Co., Inc.*, 339 F.3d 1347, 1349 (Fed. Cir. 2003) ("[A] judgment that does not dispose of pending counterclaims is not a final judgment." (citation omitted)).

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is denied. The appeal is dismissed for lack of jurisdiction, subject to reinstatement under the same docket number without the payment of an additional filing fee if Driscoll's files a notice of appeal within 60 days of an appealable order.
- (2) Each party shall bear its own costs.
- (3) The mandate shall issue forthwith.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

June 23, 2025
Date