

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

IN RE LEO STOLLER

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Appeal No. 2006-1534

**USPTO DIRECTOR'S MOTION FOR THE COURT TO
(i) CONSIDER REVISING THE ORDER OF RESPONSES TO
THE JURISDICTIONAL ISSUE RAISED BY THE COURT, OR
(ii) IN THE ALTERNATIVE, ENLARGE THE TIME FOR
FILING THE DIRECTOR'S RESPONSE**

The Director of the United States Patent and Trademark Office ("Director"), pursuant to Fed. Cir. R. 27, respectfully requests this Court reconsider the order of the parties' responses to its July 26, 2006 Order ("Order") (attached herewith as Exhibit A) concerning whether this Court has jurisdiction over the appeal of appellant Leo Stoller ("Stoller"). The Order, as it now reads, states that:

- (1) The Director of the Patent and Trademark Office is directed to respond to Stoller's motion and the jurisdictional issue within 14 days of the date of filing of this order.
- (2) Stoller is directed to respond, within 10 calendar days of the date of service of the Director's response, concerning whether this court has jurisdiction over his appeal.

However, Stoller has the burden to prove jurisdiction, which he has not done or even asserted in his current appeal.

Specifically, because "[f]ederal courts are courts of limited jurisdiction . . .

and possess only that power authorized by Constitution and statute," Kokkonen v. Guardian Life Insurance, 511 U.S. 375, 377 (1994), the appellant "bears the burden of establishing" the jurisdictional basis, Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). See also Fed. R. App. P. 28(a)(4)(B) (requiring appellant to set forth "the basis for the court of appeals' jurisdiction"). Here, since Stoller filed the appeal, Stoller is required to provide the jurisdictional basis for his appeal.


Moreover, the Director does not believe that Stoller has any jurisdictional basis for his appeal. As it now stands, Stoller has not asserted a jurisdictional basis for his appeal. Thus, if the Director is required to go first, it will be forced to speculate as to the basis Stoller may assert in his response, with no right to reply. Put another way, the Director will be attempting to prove a negative. Therefore, the Director respectfully suggests that the better course would be for (i) Stoller to provide his basis for why jurisdiction exists, and then (ii) for the Director to respond. In fact, this Court in the recent case of Hyatt v. Dudas ordered the Director as the appellant to provide the jurisdictional basis for its appeal. See Hyatt v. Dudas, Appeal No. 2006-1171 (March 1, 2006 Order) (attached herewith as Exhibit B).

In the alternative, the Director requests a 14 day extension of time to

respond to the Court's Order in order to properly brief the issue. This is the first enlargement of time requested by the Director.

Counsel for the Director, Heather F. Auyang, contacted Stoller on August 1, 2006 and received no response at the time this motion was filed. Because alternative relief is requested, this motion is accompanied by two different proposed orders. Notices of Appearance for counsel for the Director were filed today.

Respectfully submitted,


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Solicitor

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Attorneys for the Director of the United
States Patent and Trademark Office

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

United States Court of Appeals for the Federal Circuit

2006-1534

IN RE LEO STOLLER

ON MOTION

Before GAJARSA, Circuit Judge.

ORDER

Leo Stoller submits a motion to stay the order entered by the Chief Administrative Trademark Judge of the Trademark Trial and Appeal Board that imposes sanctions and filing restrictions on Stoller.

We direct the parties to respond whether this court has jurisdiction to review the order. Specifically, there may be concerns whether the order is interlocutory or whether this court or a district court has jurisdiction. See 28 U.S.C. § 1295(a)(4)(B); 15 U.S.C. 1071.

Accordingly,

IT IS ORDERED THAT:

(1) The Director of the Patent and Trademark Office is directed to respond to Stoller's motion and the jurisdictional issue within 14 days of the date of filing of this order.

(2) Stoller is directed to respond, within 10 calendar days of the date of service of the Director's response, concerning whether this court has jurisdiction over his appeal.

JUL 26 2006

Date


Arthur J. Gajarsa
Circuit Judge

cc: Leo Stoller
John M. Whealan, Esq.

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FILED
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THE FEDERAL CIRCUIT

JUL 26 2006

JAN HORRELY
CLERK

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

IN RE LEO STOLLER)
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_____)

Appeal No. 2006-1534

ORDER

Upon consideration of the Director's motion to revise the order, it is
ORDERED that the Director's motion is granted and that Stoller must
respond to the Court's July 26, 2006 Order by August ____, 2006. The Director
should file its response 10 days thereafter.

FOR THE COURT

Date: _____

United States Court of Appeals
for the Federal Circuit

cc: Leo Stoller
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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

IN RE LEO STOLLER)
)
_____)

Appeal No. 2006-1534

[ALTERNATIVE] ORDER

Upon consideration of the Director's motion for a 14 day enlargement of time, it is

ORDERED that the Director's motion is granted and that the Director's response to the July 26, 2006 Order is due on August 23, 2006.

FOR THE COURT

Date: _____

United States Court of Appeals
for the Federal Circuit

cc: Leo Stoller
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773-589-0340

John M. Whealan
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NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

United States Court of Appeals for the Federal Circuit

2006-1171

GILBERT P. HYATT,

Plaintiff-Appellee,

v.

Jon W. Dudas,
DIRECTOR, PATENT AND TRADEMARK OFFICE,

Defendant-Appellant.

ON MOTION

Before MAYER, Circuit Judge.

ORDER

Upon review of this recently docketed appeal, the court considers whether the Director of the Patent and Trademark Office should be directed to show case why the appeal should not be dismissed for lack of jurisdiction.

Gilbert P. Hyatt sued the Director, challenging the rejection of his patent applications. The United States District Court for the District of Columbia granted Hyatt's motion for summary judgment and remanded to the Patent and Trademark Office for additional proceedings. The Director appealed.

Generally, an order remanding a case to an administrative agency for additional proceedings is not appealable because it does not constitute a final judgment. Cabot Corp. v. United States, 788 F.2d 1539 (Fed. Cir. 1986). Thus, we direct the Director to

show cause, within 21 days of the date of filing of this order, why this appeal should not be dismissed.

Accordingly,

IT IS ORDERED THAT:

(1) The Director is directed to show cause, within 21 days of the date of filing of this order, why his appeal should not be dismissed. Hyatt may also respond within that time.

(2) The briefing schedule is stayed pending disposition of the jurisdictional issue.

MAR - 1 2006

Date



Haldane Robert Mayer
Circuit Judge

cc: Gregory L. Roth, Esq.
John M. Whealan, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAR - 1 2006

JAN HORBALY
CLERK