

AUG - 9 2006

U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT
ANTHORBALY
CLERK

IN RE: LEO STOLLER,

}

Appeal No: 2006-1534

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United States Court of Appeals
For The Federal Circuit

**RESPONSE TO 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**

NOW COMES Leo Stoller in response to the 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, and states as follows:

This Court issued an order on June 26, 2006, ordering 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.

Generally, the premise underlying a motion for reconsideration, modification or clarification that, based on the facts before it and the prevailing authorities, the Court erred in reaching the order or decision it issued. Such a

motion may not properly be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in a brief on the original motion. Rather, the motion normally should be limited to a demonstration that, based on the facts before it and the applicable law, the Court's ruling is in error and requires appropriate change.

The Director has not presented any facts that would be grounds for this Court erring in reaching the order it issued on July 26, 2006. **See attached order.** Consequently, the Court should deny the Director's request for reconsideration.

On the other hand, it should be noted that Leo Stoller is appealing a final order from the Trademark Trial and Appeal Board. In addition, the Chief Judge of the Trademark Trial and Appeal Board, issued an order on July 26, 2006, denying Leo Stoller's request to suspend the imposition of any sanctions. **See a true and correct copy attached hereto.**

The Federal Circuit was correct in requiring the Director of the Patent and Trademark office to respond to Stoller's emergency motion to suspend the imposition of sanctions pending Leo Stoller's appeal before this Court. The Federal Circuit recognizes that the failure to suspend the sanctions issued by the Trademark Trial and Appeal Board will cause, and is causing, irreparable harm to Leo Stoller, and that harm that a reversal by the Federal Circuit will not cure. The harm will be prolonged and thus increased if Leo Stoller must await the completion of further proceedings before the Federal Circuit.

For example, the TTAB sanction included dismissing all of the notices of opposition filed by Leo Stoller and/or his company, Central Mfg. Co., a Delaware corporation between November 2005 and March 2006. Leo Stoller's business for 34 years includes the registration and licensing of federal trademark

registrations. Leo Stoller holds rights to over 150 federal trademark registrations. The sanctions imposed by the TTAB upon Leo Stoller and his company is causing irreparable damage to Leo Stoller's federal trademark registrations and trademark licensing and marketing programs. **See attached true and correct copies of the TTAB's orders dismissing Leo Stoller's notices of opposition.**

The arbitrary dismissal of notices of opposition prior to the Federal Circuit ruling on Leo Stoller's appeal, represents a violation of Leo Stoller's due process and equal protection rights under the 5th and 14th amendments of the United States Constitution. It should be noted that Leo Stoller was sanctioned for filing an "excessive amount" of extensions to oppose. Notwithstanding the fact that there is no limit on the amounts of patents that can be filed, trademark applications that can be filed, or extensions to oppose that can be filed, The decision by the Trademark Trial and Appeal Board to sanction Leo Stoller is arbitrary and unconstitutional. The standard for filing an extension to oppose is to investigate facts prior to filing a notice of opposition. Leo Stoller holds common law rights and/or has a federal trademark registration which is, in the opinion of Leo Stoller, likely to be confused with each and every mark that Leo Stoller filed an extension to oppose. Leo Stoller had met this standard. The TTAB has not cited to any rule that Leo Stoller has violated in imposing the severe sanctions against Leo Stoller. Leo Stoller asserts that there is a high probability of reversal of the TTAB's sanction order. However, by permitting the TTAB to implement the sanctions, the said sanctions will lead to the total destruction of Leo Stoller's 34 year old trademark licensing business, without allowing the Federal Circuit the opportunity to review and make a decision on the merits of Leo Stoller's case.

Leo Stoller is currently before this Court on several appeals which are currently pending from other decisions reached by the TTAB. *Leo Stoller v. Sutech USA, Inc.*, 06-1197; and *Central Mfg. Co. v. Hepa Corporation*, 05-1566.

In addition to the currently pending cases before the Federal Circuit, Leo Stoller has appealed numerous other TTAB decisions before this Court, including *Leo Stoller v. Hyperstealth Biotechnology Corp.*, No. 05-1040; *Leo Stoller v. Northern Telepresence Corp.*, No. 05-1320. See attached.

The irreparable damage that the TTAB's order is causing can be illustrated by the fact that attorneys who are representing parties in notices of opposition and petitions to cancel that were filed prior to the period in which the TTAB issued the sanction against Leo Stoller, are now all moving to dismiss oppositions and petitions to cancel based upon the preclusive effect of the TTAB's sanction order. See attached true and correct copies of motions to dismiss in *Central Mfg. Co. v. Surgical Navigation Technologies, Inc.*, Opp. No. 91167658; and *Central Mfg. Co. v. Medtronic Sofamor Danek, Inc.*, Opp. Nos. 91154585 and 91154617; *Central Mfg. Co. (Inc.¹) v. Google, Inc.*, Cancellation No. 92045778.

The Federal Circuit was correct in its order of July 26, 2006, ordering the Director of the Patent and Trademark Office to respond to Stoller's emergency motion to suspend the sanctions issued by the TTAB and the jurisdictional issues within 14 days of the filing date of this order.

SUMMARY


There are no pending motions before the Trademark Trial and Appeal Board in reference to the Board's order sanction order of July 14, 2006. The July 14th order is a final decision, and the only relief left to Leo Stoller, is an

1. Leo Stoller is the President of Central Mfg. Co., a Delaware corporation, which Leo Stoller represents before the Trademark Trial and Appeal Board. Leo Stoller has been representing himself and his companies before the TTAB for over 25 years. Leo Stoller has been involved in over 300 inter party proceedings before the TTAB and about ten of which have been appealed to the Federal Circuit.

appeal before the Federal Circuit pursuant to 15 USC §1071.

The Director, in its motion dated August 2, 2006, has presented no grounds for reversal of the Federal Circuit July 26, 2006 order.

WHEREFORE, Leo Stoller prays that the Federal Circuit deny the Director's motion for reconsideration.



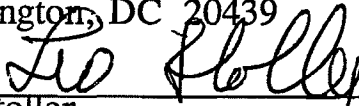
Leo Stoller, *pro se*, Appellant

Date: August 4, 2006

Certificate of Mailing

I hereby certify that four copies of the foregoing is being deposited with the U.S. Postal Service in an envelope addressed to:

Clerk of the Court
United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
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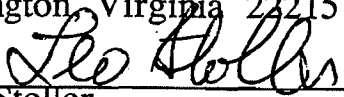


Leo Stoller
Date: August 4, 2006

Certificate of Service

I hereby certify that the foregoing is being deposited with the U.S. Postal Service in an envelope addressed to:

John M. Whealan, Solicitor
U.S. Patent and Trademark Office
P.O. Box 15667
Arlington, Virginia 22215



Leo Stoller
Date: August 4, 2006