

1(a)

NOTE: This order is nonprecedential.

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

ALBERTO SOLAR SOMOHANO,
Appellant

v.

**ANDREW HIRSHFELD, PERFORMING THE
FUNCTIONS AND DUTIES OF THE UNDER
SECRETARY OF COMMERCE FOR
INTELLECTUAL PROPERTY AND DIRECTOR OF
THE UNITED STATES PATENT AND TRADEMARK
OFFICE,**
Appellee

2021-1578

Appeal from the United States Patent and Trademark
Office, Trademark Trial and Appeal Board in No.
87575740.

ON PETITION FOR PANEL REHEARING

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

* Circuit Judge Sharon Prost vacated the position of
Chief Judge on May 21, 2021.

* Circuit Judge Evan J. Wallach assumed senior
status on May 31, 2021.

2

2(a)

SOLAR SOMOHANO v. HIRSHFELD

PER CURIAM.

ORDER

Alberto Solar Somohano filed a petition for panel rehearing. On June 1, 2021, Mr. Somohano filed a document that the court construes as a motion for leave to supplement his petition.

Upon consideration of the petition and proposed supplement,

IT IS ORDERED THAT:

The motion to supplement is granted.

The petition for panel rehearing, as supplemented, is denied.

The mandate of the court will issue on June 15, 2021.

FOR THE COURT

June 8, 2021
Date

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

3(a)

NOTE: This order is nonprecedential.

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

ALBERTO SOLAR SOMOHANO,
Appellant

v.

**ANDREW HIRSHFELD, Performing the Functions
and Duties of the Under Secretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office,**
Appellee

2021-1578

Appeal from the United States Patent and Trademark
Office, Trademark Trial and Appeal Board in No.
87575740.

Before PROST, *Chief Judge*, O'MALLEY and WALLACH, *Cir-
cuit Judges*.

PER CURIAM.

O R D E R

In response to the court's February 25, 2021 order to
show cause why this appeal should not be dismissed, the
United States Patent and Trademark Office (USPTO)

4(G)

2

SOLAR SOMOHANO v. HIRSHFELD

urges dismissal. Alberto Solar Somohano opposes dismissal.

Mr. Solar Somohano seeks review of an August 4, 2020 Final Office Action issued by a USPTO trademark examining attorney refusing registration of his trademark. On September 17, 2020, Mr. Solar Somohano requested reconsideration, which the examining attorney denied on February 3, 2021. Meanwhile, the court received Mr. Solar Somohano's notice of appeal on January 11, 2021.

A trademark applicant like Mr. Solar Somohano who is dissatisfied with a trademark examining attorney's rejection of a trademark may proceed with a two-step process for seeking further review. First, "[a]n appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner[.]" 15 U.S.C. § 1070. Second, an applicant dissatisfied with the final decision of the Board may then appeal the Board's decision to this court. 28 U.S.C. § 1295(a)(4)(B).

Here, Mr. Solar Somohano is impermissibly attempting to bypass the statutory scheme and to appeal the examining attorney's decision directly to this court. *Cf. Teacherson v. PTO*, 232 F.3d 907, 2000 WL 274172, at *2 (Fed. Cir. Mar. 10, 2000) ("The Patent Act created the PTO review process, imposing the duty to follow a specified appeal process on both applicant and PTO. The Act does not create jurisdiction to circumvent these statutory appeal routes."). We therefore agree that this appeal must be dismissed.

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) Each side shall bear its own costs.

5(9)

NOTE: This order is nonprecedential.

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

ALBERTO SOLAR SOMOHANO,
Appellant

v.

THE COCA-COLA COMPANY,
Appellee

2021-1578

Appeal from the United States Patent and Trademark
Office, Trademark Trial and Appeal Board in No.
87575740.

O R D E R

Alberto Soler Somohano notifies the court that he is challenging the Trademark Trial and Appeal Board's decision as rendered by a panel of administrative trademark judges who were appointed in violation of the Appointments Clause of the Constitution.

Upon notice of the fact that "a party questions the constitutionality of an Act of Congress in a proceeding in which the United States . . . is not a party," the clerk of this court must "certify that fact to the Attorney General." Fed. R. Civ. P. 44(a), *see also* 28 U.S.C. § 2403(a) ("In any

6(a)

2

SOLAR SOMOHANO v. COCA-COLA COMPANY

action . . . in a court of the United States to which the United States . . . is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene . . . for argument on the question of constitutionality.”).

Upon consideration thereof,

IT IS ORDERED THAT:

(1) Notice of Mr. Solar Somohano’s constitutional challenge is hereby certified to the Attorney General.

(2) No later than 30 days from the date of filing of this order, the Attorney General is directed to inform this court whether the United States intends to intervene in this appeal.

(3) The briefing schedule is stayed.

FOR THE COURT

February 02, 2021
Date

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

s29

cc: United States Attorney General