

NOTE: This order is nonprecedential.

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

In re: ARNES BECIROVIC,
Appellant

2022-1353

Appeal from the United States Patent and Trademark Office, Trademark Trial and Appeal Board in No. 88671022.

Before PROST, REYNA, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

O R D E R

Having considered the United States Patent and Trademark Office (PTO)'s "Notice of Non-Filing of Certified List Due to Lack of Jurisdiction," ECF No. 14, and appellant's response to that notice, ECF No. 19,¹ this court dismisses this appeal for lack of jurisdiction.

On July 23, 2021, the Trademark Trial and Appeal Board affirmed the examiner's refusal to register the mark in Signa ES Karim Omega LLC's application. Signa ES

¹ Arnes Becirovic appears to be the executive officer of Signa ES Karim Omega LLC, the named applicant in this matter.

petitioned the Director of the PTO for reconsideration. On November 18, 2021, the PTO issued a petition decision forwarding the request to the Board.² The PTO informs the court that the request remains pending. On December 27, 2021, appellant filed this appeal.

Under 28 U.S.C. § 1295(a)(4)(B), this court has “exclusive jurisdiction” over “an appeal from a decision of” the “Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.C. 1071).”

There is no final decision by the Board or the Director for purposes of judicial review at present. The timely filing of a request for reconsideration of the Board’s July 2021 decision rendered that decision “nonfinal for purposes of judicial review.” *Odyssey Logistics & Tech. Corp. v. Iancu*, 959 F.3d 1104, 1109 (Fed. Cir. 2020) (quoting *Stone v. INS*, 514 U.S. 386, 392 (1995)). The November 2021 decision of the PTO is likewise not a final action. That decision merely referred the reconsideration request to the Board, which hardly “mark[s] the consummation of the agency’s decisionmaking process.” *Odyssey*, 959 F.3d at 1109 (quoting *Smith v. Berryhill*, 139 S. Ct. 1765, 1775–76 (2019)) (alteration in original).

Accordingly,

² The PTO’s decision initially stated that the Director did not have authority to review final Board decisions. On February 18, 2022, the PTO issued a corrected petition decision clarifying that the rules do not authorize reconsideration requests to be made through petitions.

IN RE: BECIROVIC

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IT IS ORDERED THAT:

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

FOR THE COURT

April 5, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

To: Signa ES Karim Omega LLC (nesjordan10@gmail.com)
Subject: TRADEMARK APPLICATION NO. 88671022 - SIGNA ES - N/A
Sent: 11/18/2021 1:33:47 PM
Sent As: ECOMPET
Attachments:

United States Patent and Trademark Office (USPTO)

U.S. Application Serial No.
88671022

U.S. Registration No.

Mark: SIGNA ES

Correspondence Address:

Signa ES Karim Omega
LLC
5913 Kiverton Ridge Dr
GRAND RAPIDS MI
49508

Owner: Signa ES Karim
Omega LLC

Reference/Docket No. N/A

**Correspondence Email
Address:**

nesjordan10@gmail.com

PETITION DECISION

Issue date: November 18, 2021

This letter acknowledges receipt on September 17, 2021 of the petition to the Director of the USPTO effectively requesting reconsideration of the Trademark Trial and Appeal Board's (TTAB) final decision issued on July 23, 2021.

A review of USPTO records demonstrates that the TTAB affirmed the refusals to register the above referenced mark pursuant to Trademark Act Sections 1 and 45. 15 U.S.C. §§1051 and 1127. In particular, the TTAB determined the record does not include specimens demonstrating use of your mark in commerce in connection with the identified services and the specimens fail to depict a mark that is a substantially exact representation of the applied-for mark.

If an applicant is dissatisfied with a final TTAB decision, they may file a request for rehearing, reconsideration, or modification of the decision. The request must be filed with the TTAB within one month from the date of the decision.^[1] *Trademark Trial and Appeal Board Manual of Procedure* (TBMP) §1219.01. The Director does not have the authority to review final TTAB decisions. TMEP §1704; TBMP §§ 901.02(a), 905. Therefore, your petition to the Director is dismissed and will be forwarded to the TTAB for consideration. The petition fee will be refunded in due course. See TMEP §405.04.

/Brittany Lee-Richardson/
Attorney Advisor
Office of the Deputy Commissioner
for TM Exam Policy
Brittany.Lee-Richardson@uspto.gov
571.272.9750

[1] The time for filing the request may be extended by the TTAB upon a showing of sufficient cause. TBMP §1219.01.

To: Signa ES Karim Omega LLC (nesjordan10@gmail.com)
Subject: TRADEMARK APPLICATION NO. 88671022 - SIGNA ES - N/A
Sent: 10/12/2022 9:01:22 AM
Sent As: ECOMPET
Attachments:

United States Patent and Trademark Office (USPTO)

U.S. Application Serial No. 88671022

U.S. Registration No.

Mark: SIGNA ES

Correspondence Address:

Signa ES Karim Omega LLC
5913 Kiverton Ridge Dr
GRAND RAPIDS MI 49508

Owner: Signa ES Karim Omega LLC

Reference/Docket No. N/A

Correspondence Email Address:

nesjordan10@gmail.com

REQUEST FOR REINSTATEMENT DISMISSED

Issue date: October 12, 2022

This acknowledges receipt of your request for reinstatement filed on June 24, 2022, alleging Office error in abandoning the application identified above. For the reasons discussed below, the Notice of Abandonment issued on April 26, 2022 is withdrawn and the request for reinstatement is construed as a request under 37 C.F.R. § 2.145(e) for an extension of time to seek judicial review of the April 15, 2022 decision of the Trademark Trial and Appeal Board (TTAB). Because extension requests under Rule 2.145(e) are decided by the Office of the Solicitor under authority delegated by the Director, the matter is being forwarded to the Office of the Solicitor for consideration.

Background

On October 28, 2019, applicant filed the above-identified application for registration on the Principal Register. The application was refused registration under Trademark Act Sections 1 and 45. 15 U.S.C. § 1051, 1127. Applicant appealed the decision to the TTAB on November 1, 2020. On July 23, 2021, the TTAB affirmed the refusal. Applicant filed a petition to the Director on September 17, 2021, which was construed as a request for reconsideration and forwarded to the TTAB for decision. On December 27, 2021, while the request for reconsideration was still pending, Arnes Becirovic, filed an appeal to the U.S. Court of Appeals for the Federal Circuit related to this application. On April 5, 2022, the Federal Circuit dismissed the appeal and remanded the case to TTAB to decide the request for reconsideration. On April 15, 2022, the TTAB denied the request for reconsideration of its July 23, 2021 decision.

The April 15, 2022 TTAB decision constituted a final agency action, from which the only available relief is to seek judicial review under 15 U.S.C. § 1071 or request an extension of time to seek such review. *See* 37 C.F.R. § 2.145. Rule 2.145(d) provides a disappointed applicant “sixty-three (63) days from the date of the final decision of the Trademark Trial and Appeal Board” within which to seek judicial review under 15 U.S.C. § 1071. 37 C.F.R. § 2.145(d). Applicant had until June 17, 2022 to seek such review. Applicant did not seek judicial review of the TTAB’s April 15, 2022 decision by the deadline to do so.

On April 26, 2022, the United States Patent and Trademark Office (“USPTO”) issued a “Notice of Abandonment” that erroneously advised the applicant that the reason for abandonment was failure to timely respond to an Office action and that the applicant could file a request for reinstatement within two months of the April 26, 2022 notice. On June 24, 2022, applicant filed a request for reinstatement.

Discussion

The Director may exercise supervisory authority in appropriate circumstances. The circumstances here warrant the exercise of such authority to correct an Office error.

With limited exceptions, when the TTAB denies an applicant’s request for reconsideration of a decision of the TTAB refusing registration in an ex parte appeal, the USPTO normally does not abandon the subject application until after the 63-day period for the applicant to seek judicial review of the TTAB’s decision has expired. Here, the USPTO did not do that and instead inadvertently issued a Notice of Abandonment on April 26, 2022 that indicated the wrong reason for abandonment and that applicant had the option to file a request for reinstatement within two months from the issue date of the Notice of Abandonment.

Although the requirements of Rule 2.64 concerning reinstatement and of Rule 2.145 concerning review of TTAB decisions are distinct, it appears that the Office’s premature issuance of the Notice of Abandonment may have confused the applicant into thinking it had to reinstate the application in order to seek judicial review of the TTAB’s April 15, 2022 decision. Under these unusual circumstances, it is deemed appropriate that (1) the Notice of Abandonment issued on April 26, 2022 be withdrawn and (2) applicant’s request for reinstatement filed on June 24, 2022 be construed as a request for an extension of time to seek judicial review of the TTAB’s decision under Rule 2.145(e), which provides that extension requests filed more than 63 days from the date of the TTAB’s decision are decided under an excusable neglect standard. 37 C.F.R. § 2.145(e).

Decision

The Notice of Abandonment is withdrawn and the application is reinstated. The request for reinstatement filed on June 24, 2022 is construed as a request under Rule 2.145(e) for an extension of time to seek judicial review of the TTAB’s April 15, 2022 decision and will be forwarded to the Office of the Solicitor for consideration.

*Office of the Deputy Commissioner
for Trademark Examination Policy*

**Additional material
from this filing is
available in the
Clerk's Office.**