

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NOTE: This order is nonprecedential.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)

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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.