

NOTE: This order is nonprecedential.

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

ROLEX WATCH U.S.A., INC.,
Appellant,

v.

AFP IMAGING CORPORATION,
Appellee.

2012-1260
(Opposition No. 91188993)

Appeal from the United States Patent and Trademark
Office, Trademark Trial and Appeal Board.

ON MOTION

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

PER CURIAM.

ORDER

Rolex Watch U.S.A., Inc. ("Rolex") seeks to modify the court's August 14, 2012 order dismissing this appeal as moot.

Rolex does not dispute that this appeal is moot, but does ask this court to modify its order to vacate the deci-

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sion of the Trademark Trial and Appeal Board, and remand with instructions that the Board deem the trademark in dispute abandoned.

We deem it the better course to vacate this court's August 14, 2012 order, and remand this case to allow the Board to consider a motion to vacate its decision in the first instance in accordance with *United States Bancorp Mortgage Company v. Bonner Mall Partnership*, 513 U.S. 18, 29 (1994), and for any further proceedings deemed appropriate by the Board.

This court takes no position as to whether the Board should grant any motion for vacatur or any motion to deem the trademark abandoned.

Accordingly,

IT IS ORDERED THAT:

- (1) This court's August 14, 2012 order is vacated.
- (2) Rolex's motion is granted to the extent explained above.
- (3) Each side shall bear its own costs.

FOR THE COURT

/s/ Jan Horbaly

Jan Horbaly

Clerk

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ISSUED AS A MANDATE: NOV 01 2012