

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2008-1581

SCOTT PIVONKA and JOHN TOTTLEBEN,

Plaintiffs-Appellants,

v.

CENTRAL GARDEN & PET COMPANY,  
NYLABONE CORPORATION, and TFH PUBLICATIONS, INC.,

Defendants-Appellees.

Appeal from the United States District Court for the District of Colorado in case no. 02-CV-02394, Senior Judge Richard P. Matsch.

ON MOTION

Before DYK, Circuit Judge.

### ORDER

TFH Publications, Inc. (TFH) moves to have this appeal assigned to the same panel that heard an earlier appeal, Pivonka v. Axelrod, 2008-1413, involving a related patent. TFH states that Scott Pivonka and John Tottleben oppose.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied. The appeal will be assigned to a merits panel in the usual course.

**FEB 24 2009**

\_\_\_\_\_  
Date

FOR THE COURT

/s/ Jan Horbaly  
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Jan Horbaly  
Clerk

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

**FEB 24 2009**

JAN HORBALY  
CLERK

cc: Ramon L. Pizarro, Esq.  
Russell S. Burnside, Esq.

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