

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2009-1115, -1246

GEORGE E. KERSEY,

Plaintiff-Appellant,

v.

COMMISSIONER OF PATENTS AND TRADEMARKS,

Defendant-Appellee.

Appeals from the United States District Court for the District of Columbia in case nos. 1:06-MC-416 and 1:07-MC-302, Judge Emmett G. Sullivan.

ON MOTION

Before PROST, Circuit Judge.

### ORDER

George E. Kersey moves to strike the brief of the Commissioner of Patents and Trademarks. The Commissioner opposes. Kersey moves for leave to reply, with reply attached.

Kersey argues that the certificate of service in the Commissioner's brief indicates that the brief was served on May 25, 2009, while the postmark on the envelope indicates that the brief was not mailed until May 26, 2009. Counsel for the Commissioner responds that he deposited the brief in the internal mails of the United

States Attorney's Office during regular business hours on May 25, 2009 but that it "evidently was not postmarked until the following day."

The court notes that May 25 was a holiday. Thus, the Commissioner's brief was timely and the motion to strike is denied.

Accordingly,

IT IS ORDERED THAT:

- (1) Kersey's motion to strike the Commissioner's brief is denied.
- (2) Kersey's motion for leave to file a reply is granted.

FOR THE COURT

**AUG 11 2009**

\_\_\_\_\_  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: George E. Kersey  
David C. Rybicki, Esq.

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

**AUG 11 2009**

**JAN HORBALY  
CLERK**