

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1484
(Opposition No. 91169175)

ROHIT PRAKASH,

Appellant,

v.

MAX ROHR, INC.,

Appellee.

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

ON MOTION

Before RADER, CLEVINGER, and DYK, Circuit Judges.

PER CURIAM.

ORDER

Rohit Prakash moves to recall the mandate. The court treats Prakash's submission as a motion for reconsideration of the court's order dismissing his appeal. Max Rohr, Inc. opposes.

Prakash argues that the court's dismissal order conflicts with the United States Supreme Court's ruling in Abbott Labs v. Gardner, 387 U.S. 136 (1967). Prakash argues that in Abbott Labs the Supreme Court granted a right to judicial review of an agency rule if the party seeking review would suffer substantial hardship if review were delayed until after enforcement. Prakash argues that the Trademark Trial and Appeal Board's decision denying his motion to amend his pleadings will result in substantial and unnecessary expense for both sides and thus should be immediately appealable.

We determine that Abbott Labs is not on point. This case does not involve pre-enforcement judicial review of agency regulations. In this case, Prakash alleges that the harm resulting from a Board decision that may turn out to be incorrect warrants immediate judicial review, ignoring our decision in Copelands Enter., Inc. v. CNV, Inc., 887 F.2d 1064 (Fed. Cir. 1989) (en banc), which held that Trademark Trial and Appeal Board decisions are not final and appealable unless there is a final decision that ends litigation before the Board. Because the decision Prakash seeks to appeal is not a final decision, we deny the motion.

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

MAR 25 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Rohit Prakash
Charles W. Grimes, Esq.

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

MAR 25 2010

JAN HORBALY
CLERK