

NOTE: This order is nonprecedential.

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

TONY COLIDA,
Plaintiff-Appellant,

v.

**SONY ERICSSON MOBILE COMMUNICATIONS
(USA), INC.,**
Defendant-Appellee.

2010-1374

Appeal from the United States District Court for the
Southern District of New York in case no. 07-CV-9260,
Judge Richard J. Holwell.

ON MOTION

Before LINN, Dyk, and PROST, *Circuit Judges.*

PER CURIAM.

O R D E R

Sony Ericsson Mobile Communications (USA), Inc.
moves to dismiss Tony Colida's appeal as frivolous and
also moves for sanctions.

Colida sued Sony Ericsson alleging infringement of his design patent. The United States District Court for the Southern District of New York dismissed Colida's complaint as barred by res judicata because he had lost in two previous patent infringement cases involving Sony Ericsson that were essentially the same design as the Sony Ericsson product currently at issue. Colida appeals.

We note that on at least two previous occasions, we have determined that Colida's appeals involving his design patent were frivolous as filed. *See Colida v. Sharp Elec. Corp.*, 125 Fed.Appx. 993 (Fed. Cir. 2005); *Colida v. Sanyo N. Am. Corp.*, No. 04-1287, 2004 WL 2853034 (Fed. Cir. Dec. 2, 2004).

An appeal is frivolous when an appellant grounds his appeal on arguments or issues that are "beyond the reasonable contemplation of fair-minded people." *Abbs v. Principi*, 237 F.3d 1342, 1345 (Fed. Cir. 2001). Moreover, an appeal as to which "no basis for reversal in law or fact can be or is even arguably shown" is frivolous. *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 948 F.2d 1573, 1578 (Fed. Cir. 1991). Such an appeal unnecessarily wastes the limited resources of the court as well as those of the appellee. *Id.*

When an appellant is proceeding in forma pauperis, as Colida is in this appeal, "the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . is frivolous . . ." 28 U.S.C. § 1915(e)(2). Here, Colida's brief fails to provide any support for why the district court might have erred in dismissing his complaint. In response to the questions whether the district court erred, Colida responds with "JURIS-PRUDENCE." No basis for reversal in law or fact can be or is arguably shown, and the appeal is frivolous. Although we decline to award sanctions in this appeal, we

award Sony Ericsson its costs pursuant to Fed. R. App. P. 39(a)(1) and 28 U.S.C. § 1915(f)(1).

Accordingly,

IT IS ORDERED THAT:

- (1) Sony Ericsson's motion to dismiss is granted.
- (2) Sony Ericsson's motion for sanctions is denied.
- (3) Costs are awarded to Sony Ericsson.

FOR THE COURT

OCT 26 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Tony Colida
Michelle Mancio Marsh, Esq.

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Issued As A Mandate: OCT 26 2010

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

OCT 26 2010

JAN HORBALY
CLERK