

NOTE: This order is nonprecedential.

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

**TEMPUR-PEDIC MANAGEMENT, INC. AND DAN
FOAM APS,**
Appellants,

v.

FKA DISTRIBUTING CO.,
Defendant-Appellee.

2012-1052
(Opposition no. 91185706)

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

Before BRYSON, MOORE and O'MALLEY, *Circuit Judges.*
O'MALLEY, *Circuit Judge.*

O R D E R

The parties jointly move to remand this case to the Trademark Trial and Appeal Board ("Board"), due to settlement.

The parties state that they have settled the case and move to remand so that the Board can consider a motion to vacate its decision. We grant the motion to the extent that we remand for the limited purpose of the Board's

consideration of the parties' motions. *Ohio Willow Wood Co. v. Thermo-Ply, Inc.*, 629 F.3d 1374, 1375 (Fed. Cir. 2011). We retain jurisdiction so that any of the parties may seek appellate review by notifying the clerk of the court within thirty days of entry of the Board's determination on remand. The appeal is held in abeyance pending the resolution of the motion by the Board. The parties should promptly inform this court of the Board's ruling on the motion and should propose how they believe the appeals should proceed in light of the Board's ruling.

In granting the motion, the Federal Circuit takes no position as to whether the Board should grant the motion for vacatur.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion to remand is granted to the limited extent explained above. The court retains jurisdiction over the appeal at this time.

FOR THE COURT

SEP 20 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Amy L. Vandamme., Esq.
Robert C.J. Tuttle, Esq.

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

SEP 20 2012

JAN HORBALY
CLERK