

DATE: **October 1, 2015**

SUBJECT: **DISPOSITION OF CASES - OPINIONS AND ORDERS - VACATE,
REVERSE, REMAND - COSTS**

1. The court employs only the following means in disposing of matters before it for decision: precedential opinions; nonprecedential opinions; precedential orders; nonprecedential orders; and Rule 36 judgments of affirmance without opinion.

2. The court's decisions on the merits of all cases submitted after oral argument or on the briefs, other than those disposed of under Rule 36, shall be explained in an accompanying precedential or nonprecedential opinion.

3. The court's decisions on motions, petitions, and applications will be by precedential or nonprecedential orders.

4. The court's policy is that all opinions and orders shall be as short and as limited to the dispositive issue as the nature of the cases or motions will allow.

5. At the election of the authoring judge, a unanimous or majority opinion, precedential or nonprecedential, may be headed "PER CURIAM." Rule 36 judgments shall be "PER CURIAM."

6. Copies of all issued opinions and precedential orders shall be provided when issued to all judges of the court, to other participating judges, to the parties involved, and to the tribunal from which the appeal was taken, or which is affected by the order. Copies of Rule 36 judgments signed by the clerk will be provided by the clerk to the parties, the trial tribunal, and the members of the panel.

7. ~~All dispositions will be entered by the clerk on the daily disposition sheet.~~ All Rule 36 judgments and all opinions and orders, precedential and nonprecedential, are public records of the court and shall be accessible to the public.

8. Nonprecedential opinions and orders and Rule 36 judgments shall not be employed as binding precedent by this court, except in relation to a claim of res judicata, collateral estoppel, or law of the case, and shall carry notice to the nonprecedential effect.

9. The court will VACATE all or part of a judgment, order, or agency decision when it is being eliminated but not replaced with a contrary judgment or order of this court.

The court will REVERSE all or part of a judgment, order, or agency decision when it is being replaced with a contrary judgment or order of this court.

The court will REMAND only when there is something more for the trial court or agency to do, and will supply such guidance as the case may warrant.

10. Adoption of opinions of trial tribunals.

(a) Because a precedential opinion stating that this court affirms “on the basis of” an opinion of a trial tribunal might cause confusion as to what constitutes precedent in this court, that format will no longer be used in precedential opinions. It is not objectionable in nonprecedential opinions. Except for the provisions (b) and (c) below, a precedential opinion should say enough to supply, in itself without reference to the opinion or order being reviewed, the basis of this court’s decision.

(b) If a trial tribunal's opinion has been published, and a panel can accept all or a separable part thereof as its own opinion, the panel may state that it adopts the trial tribunal's opinion or separable part as its own. If this has been done, the panel's opinion, when circulated to the court for review, shall be accompanied by a copy of what has been adopted. The panel's precedential opinion and what has been adopted then constitutes precedent in this court.

(c) If a trial tribunal's opinion has not been published, and a panel accepts all or a separate part thereof as its own opinion in its precedential opinion, the panel will circulate for review and will publish the adopted opinion or separable part, as an appendix to or in the body of the panel's opinion, with suitable attribution.

11. Costs.

(a) When a panel affirms or reverses a judgment or order in its entirety, or dismisses an appeal, it need say nothing respecting costs, which will be assessed by the clerk automatically against the losing party. A panel that does not wish assessment of costs against the losing party will instruct that costs be assessed as the panel may deem just.

(b) When a panel's decision is other than a total affirmance or reversal (e.g., affirm in part, reverse in part, vacate, remand) the panel will include in its opinion or order a direction on the award of costs.

(c) When a panel's decision is issued pursuant to Rule 36 in a matter involving an appeal and a cross-appeal, no costs will be assessed, unless the panel so directs in the Rule 36 judgment.

(d) A panel's direction respecting costs will appear as the last paragraph in this court's opinion or order and will be headed "COSTS."

(e) The foregoing does not apply to appeals from decisions of the Boards of the Patent and Trademark Office. The clerk will not send forms for designation of costs to parties in such cases.