

NOTE: This order is nonprecedential.

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

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**ILLINOIS TOOL WORKS, INC.,**  
*Appellant*

v.

**TERMAX COMPANY,**  
*Cross-Appellant*

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2023-1252, 2023-1254

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2021-00724.

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**ON MOTION**

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Before DYK, REYNA, and CHEN, *Circuit Judges*.  
DYK, *Circuit Judge*.

**ORDER**

Illinois Tool Works, Inc. moves to voluntarily dismiss its appeal, No. 2023-1252, and to dismiss Termax Company's cross-appeal, No. 2023-1254. Termax opposes dismissal of its cross-appeal. We grant both motions.

Termax appeals from the Patent Trial and Appeal Board's final written decision in this *inter partes* review, which agreed with Termax that all challenged claims of Illinois Tool Works' U.S. Patent No. 10,683,882 are unpatentable. We have employed the familiar rule that "the prevailing party in a lower tribunal cannot ordinarily seek relief in the appellate court" to appeals from the Board. *SkyHawke Techs., LLC v. Deca Int'l Corp.*, 828 F.3d 1373, 1375 (Fed. Cir. 2016) (citation omitted). We see nothing that warrants departing from that rule here.

In opposing dismissal, Termax contends that the Board erred in its construction of certain claim limitations that have also been incorporated into Illinois Tool Works' new patent. Termax hopes that a favorable decision on its claim construction arguments here will collaterally estop Illinois Tool Works from asserting those newly issued claims. But in *SkyHawke*, we rejected a similar attempt to appeal from a Board's claim construction when the appellant did "not seek to alter the judgment of the Board." *Id.* There, as here, Termax "is merely trying to preempt an unfavorable outcome" as to some other potential proceeding regarding Illinois Tool Works' new patent "that may or may not arise in the future," and, if such an outcome does arise, Termax may appeal "at that time." *Id.* at 1377.

Accordingly,

IT IS ORDERED THAT:

- (1) The motions are granted, and the appeals are dismissed.

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(2) Each side shall bear its own costs.

FOR THE COURT

March 8, 2023  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

ISSUED AS A MANDATE (as to Appeal No. 2023-1252  
only): March 8, 2023