

NOTE: This order is nonprecedential.

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

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**REXNORD INDUSTRIES, LLC,**  
*Appellant,*

v.

**DAVID J. KAPPOS, DIRECTOR  
UNITED STATES PATENT AND TRADEMARK  
OFFICE,**  
*Appellee,*

v.

**HABASIT BELTING, INC. (NOW KNOWN AS  
HABASIT AMERICA INC.),**  
*Cross-Appellant.*

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2012-1584, -1585  
(Reexamination No. 95/000,071)

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Appeals from the United States Patent and Trade-  
mark Office, Board of Patent Appeals and Interferences.

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**ON MOTION**

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Before NEWMAN, PROST, and WALLACH, *Circuit Judges*.  
WALLACH, *Circuit Judge*.

REXNORD INDUSTRIES v. KAPPOS

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## ORDER

The Director of the United States Patent and Trademark Office moves to dismiss Rexnord's appeal for lack of jurisdiction. Rexnord responds.

Rexnord filed this appeal seeking review of a non-final decision by the Board of Patent Appeals and Interferences, which had initially and mistakenly been marked "final." That decision included a new ground of rejection against certain of the patentee's claims. The Board changed its designation of the decision after Rexnord filed the appeal.

The Director argues that this court lacks jurisdiction to review an appeal of a non-final decision by the Board. We agree. *See, e.g., In re Makari*, 708 F.2d 709 (Fed. Cir. 1983). Rexnord may seek review from a final Board decision if appropriate.

Accordingly,

IT IS ORDERED THAT:

The motion to dismiss is granted. The appeals are dismissed. Each side shall bear its own costs.

FOR THE COURT

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

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Issued As A Mandate: DEC 27 2012