

NOTE: This order is nonprecedential.

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

IFIT INC.,
Appellant

v.

KATHERINE K. VIDAL, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office,
Intervenor

2024-1041

Appeal from the United States Patent and Trademark Office, Trademark Trial and Appeal Board in No. 91264855.

ON MOTION

Before CHEN, LINN, and HUGHES, *Circuit Judges*.
LINN, *Circuit Judge*.

O R D E R

iFIT Inc. has filed its opening brief challenging the Trademark Trial and Appeal Board's dismissal of its opposition to registration of ERB Industries, Inc.'s ("ERB")

trademark.* The Director of the United States Patent and Trademark Office now moves to waive Federal Circuit Rule 27(f) and remand for further proceedings. iFIT opposes.

An agency may properly request a remand to reconsider its previous position. *SKF USA Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001). In such cases, remand is usually appropriate if the agency expresses a “substantial and legitimate” concern about its earlier decision or it wishes to reconsider its decision in light of a new legal decision. *Id.* Here, the Director raises legitimate concerns about the Board’s findings on the relatedness between ERB’s goods and iFIT’s services and also wishes to reconsider the decision in light of *Naterra International, Inc. v. Bensalem*, 92 F.4th 1113, 1119 (Fed. Cir. 2024). The Director further notes that on remand the Board will “address all of Appellant’s alleged deficiencies.” Reply at 3. We agree with the Director that remanding now is the better course of action, as it will preserve judicial resources and may simplify the issues for any future appeal.

Accordingly,

IT IS ORDERED THAT:

(1) The Director’s motion is granted. The case is remanded to the Trademark Trial and Appeal Board for further proceedings consistent with the motion and this order.

* In light of ERB’s non-participation in this appeal, the court granted the Director of the United States Patent and Trademark Office’s leave to intervene.

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(2) Each side to bear its own costs.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

May 3, 2024
Date