

NOTE: This order is nonprecedential.

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

CARDPOOL, INC.,
Plaintiff-Appellant,

v.

PLASTIC JUNGLE, INC.,
Defendant-Appellee.

2013-1227

Appeal from the United States District Court for the Northern District of California in No. 12-CV-4182, Judge William H. Alsup.

ON PETITION FOR PANEL REHEARING

Before RADER, *Chief Judge*, REYNA and WALLACH, *Circuit Judges.*

RADER, *Chief Judge.*

O R D E R

Cardpool, Inc. petitions the court for panel rehearing, and has advised the court that as a result of a reexamination of U.S. Patent No. 7,494,048, the United States

Patent and Trademark Office deemed patentable, *inter alia*, an amended Claim 1, the sole independent claim deemed ineligible below under 35 U.S.C. § 101. On the court's invitation, Plastic Jungle, Inc. n/k/a Cardflo, Inc. (Plastic Jungle) responded to the petition. Cardpool moved for leave to file a reply, and replied after the court granted its motion. The parties both request that this court vacate its decision, and the district court's dismissal pursuant to FED. R. CIV. P. 12(b)(6), as moot in light of the reexamined claims.

Because vacatur of the affirmance under FED. R. APP. P. 36 would not offend the public interest in this case, and because both parties agree with such action, the court vacates its prior decision and dismisses the appeal. *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994).

However, the court finds that it would not be appropriate in this context to vacate the district court's judgment because Cardpool, the losing party below, caused the change in circumstances. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 71–72 (1997) (citing *Bancorp*, 515 U.S. at 23). Thus, this court remands to the district court to determine what actions, if any, are appropriate in light of the reexamined claims.

Accordingly,

IT IS ORDERED THAT:

- 1) The petition for panel rehearing filed by Cardpool is granted-in-part.
- 2) The court's decision affirming the district court's judgment is vacated and the appeal is dismissed. The matter is remanded to the district court for further proceedings.

FOR THE COURT

April 29, 2014
Date

/s/ Daniel E. O'Toole
Daniel E. O'Toole
Clerk of Court