

NOTE: This order is nonprecedential.

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

IN RE DANIELLE RENEE FORGET SHIELD

2013-1562

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Serial No. 10/799,826.

ON MOTION

Before PROST, O'MALLEY, and TARANTO, *Circuit Judges*.

PER CURIAM.

ORDER

The Director of the United States Patent and Trademark Office moves to waive the requirements of Fed. Cir. R. 27(f) and to remand to the Patent Trial and Appeal Board for further proceedings. Danielle Renee Forget Shield opposes. The Director replies.

The primary issue on appeal is whether the Board erred in affirming the examiner's rejection of the representative claim as obvious under 35 U.S.C. § 103. Specifically, Shield challenges the Board's reliance on the Kasik reference as teaching the "adapted to" element of the claim.

The Director notes that the Board did not make a finding about whether the reference teaches that limitation. Rather, the Director states that the Board mistakenly concluded that Shield had not challenged the limitation and only on that basis accepted the limitation as present in the art. The Director concedes that the Board's current rationale is incomplete and could not be adequately reviewed or defended because it lacks adequate findings. As a result, the Director seeks a remand so the Board can take appropriate action. We agree with the Director's reading of the Board decision. As a result, we remand for the Board to reassess its obviousness analysis in light of the Director's concession of error.

Accordingly,

IT IS ORDERED THAT:

(1) The motion is granted. The Board's decision is vacated and the case is remanded for further proceedings consistent with this order.

(2) Each side shall bear its own costs.

FOR THE COURT

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

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ISSUED AS A MANDATE: April 16, 2014