

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re Leo Stoller

328 F. App'x 623 (Fed. Cir. 2008) · Decided December 2, 2008

SUMMARY

The United States Court of Appeals for the Federal Circuit dismissed Leo Stoller’s petition for a writ of mandamus seeking to compel the PTO to reopen an attorney disciplinary investigation. The court held that the challenged PTO actions were outside its jurisdiction and denied Stoller’s motion to proceed in forma pauperis because his supporting financial form was incomplete.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Michel; Prost; Rader
JURISDICTION	Federal
DECIDED	December 2, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	Leo Stoller petitioned the Federal Circuit for a writ of mandamus directing the United States Patent and Trademark Office to reopen an attorney disciplinary investigation. He also moved for leave to proceed in forma pauperis.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Leo Stoller v. United States Patent and Trademark Office

TOPICS

- appellate jurisdiction
- writ of certiorari
- judicial review of agency action
- administrative law
- appellate procedure

PRACTICE AREAS

- appellate procedure
- administrative law
- intellectual property
- civil procedure

QUESTIONS PRESENTED

- Whether the Federal Circuit had jurisdiction to issue a writ of mandamus directing the PTO to reopen its investigation and review the dismissal of Stoller's disciplinary complaint.

2. Whether Stoller was entitled to proceed in forma pauperis despite submitting an incomplete financial-information form.

HOLDINGS

1. The Federal Circuit lacked jurisdiction to entertain Stoller's mandamus petition because the PTO orders he challenged were not final decisions within the categories specified in 28 U.S.C. § 1295(a)(4), and a writ therefore could not be in aid of the court's jurisdiction.
2. The motion for leave to proceed in forma pauperis was denied because Stoller's submitted form was incomplete and omitted required information concerning income, employment, expenses, and cash held by him and his spouse.

KEY QUOTATIONS

“This court does not have general jurisdiction to review ail PTO decisions.” (624)

“Because the orders of which Stoller seeks review do not fall within any of those categories, any writ granted by the court could not be in aid of this court’s jurisdiction.” (624)

FACTUAL BACKGROUND

Stoller complained to the PTO's Office of Enrollment and Discipline that an attorney had engaged in dishonesty, fraud, deceit, or misrepresentation involving federal trademark registrations and the sale or assignment of allegedly invalid trademarks. On August 4, 2008, the Office of Enrollment and Discipline concluded that the evidence was insufficient to support a disciplinary violation and closed its file. The PTO General Counsel subsequently informed Stoller that the dismissal was not reviewable under 37 C.F.R. § 11.2(d).

PROCEDURAL HISTORY

Stoller filed an attorney disciplinary complaint with the PTO's Office of Enrollment and Discipline, which closed the matter after finding insufficient evidence of a disciplinary violation. The PTO General Counsel declined to review the dismissal under 37 C.F.R. § 11.2(d). Stoller then sought mandamus relief in the Federal Circuit, which dismissed the petition for lack of jurisdiction and denied his in forma pauperis motion because the supporting form was incomplete.

DISPOSITION

dismissed

CASES CITED

- In re Makari, 708 F.2d 709, 711-12 (Fed. Cir. 1983)

OPINION

PER CURIAM.

*624ON PETITION FOR WRIT OF MANDAMUS PER CURIAM. ORDER Leo Stoller petitions for a writ of mandamus directing the United States Patent and Trademark Office (PTO) to reopen the investigation of an attorney disciplinary complaint and moves for leave to proceed in forma pauperis. Stoller filed a complaint with the PTO's Office of Enrollment and Discipline (OED) alleging that an attorney engaged in a scheme involving dishonesty, fraud, deceit, or misrepresentation in the procurement of, or attempt to procure, Federal Trademark Registrations and in the selling and assignment of invalid and unenforceable trademarks to third parties.

On August 4, 2008, OED notified Stoller that it concluded that there was insufficient evidence to support a conclusion that the attorney violated any PTO disciplinary rules and thus OED would close the file without further action. Stoller sought review of OED's decision by the PTO's General Counsel.

On September 24, 2008, the General Counsel notified Stoller that it would not review his request because a decision to dismiss a complaint is not subject to review pursuant to 37 C.F.R. § 11.2(d). This court may issue "all writs necessary or appropriate in aid of' its jurisdiction. 28 U.S.C. § 1651. This court does not have general jurisdiction to review ail PTO decisions.

Instead, the court has jurisdiction to review PTO decisions only to the extent that they are final decisions of the Board of Patent Appeals and Interferences with respect to patent applications and interferences or final decisions of the Under Secretary of Commerce for Intellectual Property and Director of the PTO or the Trademark Trial and Appeal Board with respect to applications for registration of marks.

See 28 U.S.C. § 1295(a)(4). Because the orders of which Stoller seeks review do not fall within any of those categories, any writ granted by the court could not be in aid of this court's jurisdiction. Therefore, Stoller has not shown that this court has jurisdiction to entertain the writ. Cf. *In re Makari*, 708 F.2d 709, 711-12 (Fed.Cir.1983) (dismissing for lack of jurisdiction mandamus petition seeking review of decision of PTO Commissioner).

In addition, the form submitted in support of Stoller's in forma pauperis motion is incomplete. The form is missing the second, fourth, and fifth pages, where details about income, employment, and expenses are required to be recorded. Further, Stoller did not answer question 5, concerning how much cash he and his spouse have.

Because Stoller has failed to provide the required information, the motion is denied. Accordingly, IT IS ORDERED THAT: (1) The petition for a writ of mandamus is dismissed. (2) The motion for leave to proceed in forma pauperis is denied.