NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

IN RE MAN MACHINE INTERFACE TECHNOLOGIES, LLC,
Petitioner.

2014-114

On Petition for Writ of Mandamus to the United States Patent and Trademark Office in No. 90/012,469.

ON PETITION

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

TARANTO, *Circuit Judge*.

O R D E R

Man Machine Interface Technologies, LLC ("MMIT") petitions for a writ extraordinaire, which this court interprets as a writ of mandamus, to direct the Central Reexamination Unit of the United States Patent and Trademark Office ("PTO") to confirm the claims of U.S. Patent No. 6,069,614, which are currently subject to *ex parte* reexamination, and to withdraw the final rejection of those claims. MMIT argues that the PTO's rejection of those claims as anticipated under 35 U.S.C. § 102 and

obvious under 35 U.S.C. § 103 represents "gross misconduct" by the PTO and was "mal-intentioned."

The remedy of mandamus is available only in extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power. *In re Calmar, Inc.*, 854 F.2d 461, 464 (Fed. Cir. 1988). A party seeking a writ bears the burden of proving that it has no other means of securing the relief desired, *Mallard v. United States District Court*, 490 U.S. 296, 309 (1989), and that the right to issuance of the writ is "clear and indisputable," *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980).

Before filing its petition in this court, MMIT challenged the examiner's final rejection by filing an appeal to the Patent Trial and Appeal Board under 35 U.S.C. § 134. If the Board upholds the examiner's rejections, MMIT can seek further review. *See* 35 U.S.C. §§ 141, 145. MMIT thus has other means of obtaining the relief it desires. It is not entitled to the extraordinary remedy of mandamus.

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

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

s30