

NOTE: This order is nonprecedential.

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

TRACY NIXON,
Plaintiff-Appellant

v.

GENERAL MOTORS CORPORATION,
Defendant-Appellee

2021-1120

Appeal from the United States District Court for the Eastern District of Texas in No. 2:19-cv-00287-JRG-RSP, Chief Judge J. Rodney Gilstrap.

PER CURIAM.

O R D E R

This court considers whether Tracy Nixon's recently docketed matter should be dismissed.

Mr. Nixon's complaint alleges that General Motors Corporation ("GM") infringed Nixon's design "before the plaintiff could patent the invention for sale to the public." Compl. at 1, *Nixon v. General Motors Corp.*, No. 19-cv-00287 (E.D. Tex. Aug. 26, 2019), ECF No. 1. Mr. Nixon moved the district court to enter a default judgment against GM, which the court denied on the basis that GM

was not properly served. Mr. Nixon filed objections to the order, which the district court overruled in an order dated August 14, 2020. Mr. Nixon moved the district court to certify the August 14th order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Before the district court acted on that request, Nixon filed with this court a “Request Permission for Leave to File Interlocutory Appeal 28 U.S.C. § 1292(b),” ECF No. 1, which has been docketed as the above-captioned matter.

It appears that this case is not within this court’s limited subject matter jurisdiction. Although this court does have jurisdiction “of an appeal from a final decision . . . in any civil action arising under . . . any Act of Congress related to patents,” it does not appear that Mr. Nixon’s complaint raises a non-frivolous claim arising under the patent laws. *See Gayler v. Wilder*, 51 U.S. 477, 493 (1850) (explaining that “no suit can be maintained by the inventor against any one for using it before the patent is issued”).

Nor does it appear that transfer to the appropriate federal court of appeals, in this case, the United States Court of Appeals for the Fifth Circuit, would be in the interest of justice. It appears that Mr. Nixon’s request for permission to appeal was initially filed at that court, which issued an order on November 4, 2020 denying his request because “[t]he district court’s order denying the motion for default judgment is not a final order . . . [and] the order has not been certified for immediate appeal under 28 U.S.C. § 1292(b) by the district court.” *Nixon v. Gen. Motors Corp.*, No. 20-90032 (5th Cir. Nov. 4, 2020).

Accordingly,

IT IS ORDERED THAT:

- (1) The parties are directed to show cause, within 30 days of the date of filing of this order, why this matter should not be dismissed.
- (2) The briefing schedule is stayed.

FOR THE COURT

November 16, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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