

NOTE: This disposition is nonprecedential.

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

PROLITEC, INC.,
Appellant

v.

SCENTAIR TECHNOLOGIES, INC.,
Appellee

**JOSEPH MATAL, PERFORMING THE FUNCTIONS
AND DUTIES OF THE UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR, U.S. PATENT AND TRADEMARK
OFFICE,**
Intervenor

2015-1020

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2013-
00179.

ON PETITION FOR REHEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK, MOORE,
O'MALLEY, REYNA, WALLACH, TARANTO, CHEN, and
HUGHES, *Circuit Judges*.¹

PER CURIAM.

ORDER

In light of this court's en banc decision in *Aqua Products, Inc. v. Matal*, No. 2015-1177, 2017 WL 4399000 (Fed. Cir. Oct. 4, 2017) (en banc), the portions of the panel's and Patent Trial and Appeal Board's decisions in this case concerning Prolitec's motion to amend are vacated, *see Prolitec, Inc. v. ScentAir Techs., Inc.*, 807 F.3d 1353, 1362-65 (Fed. Cir. 2015) (Majority Op. Part III); *ScentAir Techs., Inc. v. Prolitec, Inc.*, IPR2013-00179, Paper No. 60, 2014 WL 2965704, at *15-17 (P.T.A.B. June 26, 2014) (Final Written Decision Part III), and this case is remanded to the Board for further proceedings consistent with *Aqua*.

IT IS ORDERED THAT:

- 1) The petition for rehearing en banc is granted.
- 2) The panel opinion and Patent Trial and Appeal Board's decision are vacated as described herein and the case is remanded.

FOR THE COURT

October 18, 2017
Date

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

¹ Circuit Judge Stoll did not participate.