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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| RONALD R. SHEA,<br><br>Plaintiff - Appellant,<br><br>v.<br><br>DIRECTOR FOR PATENTS, In the capacity as representative of the United States Patent Office,<br><br>Defendant - Appellee. | No. 11-56947<br><br>D.C. No. 2:11-cv-02075-DMG-SS<br><br>MEMORANDUM[*] |

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted February 11, 2013[**]

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Ronald Shea, an attorney, appeals pro se from the district court's order dismissing for lack of subject matter jurisdiction his Federal Tort Claims Act

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

("FTCA") action arising from the United States Patent and Trademark Office's ("USPTO") initial processing of a patent application. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Chamberlin v. Isen*, 779 F.2d 522, 523 (9th Cir. 1985), and we affirm.

The district court properly dismissed Shea's action for lack of subject matter jurisdiction because the United States is immune from liability under the "discretionary function" exception to the FTCA. 28 U.S.C. § 2680(a); *see also Chamberlin*, 779 F.2d at 523-26 (holding that FTCA's discretionary function exception shields the United States from tort liability for USPTO employees' processing and examination of patent applications in light of "the overall scheme providing for discretionary examination of patent applications" and "the public policy implications of patent examining"). Contrary to Shea's contentions, 35 U.S.C. § 132(a) does not warrant a different conclusion. *See* 35 U.S.C. §§ 131, 132(a); *Chamberlin*, 779 F.2d at 524-25.

**AFFIRMED.**