

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 36

Filed by: Interference Trial Section Merits Panel
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

BRIAN E. WOODNORTH and KENNETH L. SHEHOW,

Junior Party,
(Patent 5,966,772),

v.

GEORGE H. WAKAT,

Senior Party,
(Application 09/560,172).

Patent Interference No. 104,660

Before: SCHAFFER, SPIEGEL and GARDNER-LANE, Administrative Patent Judges.
SCHAFFER, Administrative Patent Judge.

JUDGMENT

This interference was declared with the following count:

Claim 1 of Woodnorth Patent 5,996,772 or Claim 28 of Wakat application 09/560,172.

Woodnorth Claims 1-26 and Wakat Claims 20-22, 24-39 were designated as corresponding to the count. Paper 1, p. 5. The parties filed preliminary motions and an oral hearing was held on November 30, 2001. A decision on preliminary motions (Paper 32) held that all of Wakat's involved

claims and Woodnorth's claims 1-4 and 16 were unpatentable over prior art. As a result, both alternatives of the count were unpatentable and the count was no longer appropriate. In addition, Woodnorth's claims 5-15 and 17-26 were the only patentable claims remaining in this interference. An APJ issued an order to show cause why judgment should not be entered in favor of Woodnorth, the junior party. Paper 33. The order also required the parties to propose a new count for use in the event the interference proceeded to the priority phase. Paper 33, p. 2. Woodnorth filed a response. Woodnorth argued that the interference should be terminated and that a count representing the common inventive subject matter of the parties could not be proposed. Paper 35. Wakat did not file a response or request final hearing. Accordingly, entry of judgment at this time is appropriate. 37 CFR § 1.640(e). Accordingly, it is

ORDERED that judgment as to the subject matter of Woodnorth claims 5-15 and 17-26 of Application 09/560,172 is awarded in favor of junior party, BRIAN E. WOODNORTH and KENNETH L. SHEHOW;

FURTHER ORDERED that senior party, GEORGE H. WAKAT, is not entitled to a patent containing claims 1-26 of Patent 5,966,772;

FURTHER ORDERED that a copy of this judgment be made of record in the file of Patent 5,966,772 and in Application 09/560,172; and

FURTHER ORDERED that if there is a settlement agreement which has not been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

_____)	
RICHARD E. SCHAFER)	
Administrative Patent Judge)	
)	
_____)	BOARD OF PATENT
CAROL SPIEGEL)	
Administrative Patent Judge)	APPEALS AND
)	
_____)	INTERFERENCES
SALLY GARDNER-LANE)	
Administrative Patent Judge)	

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