

The opinion in support of the decision being entered today is not binding precedent of the Board.

104,689: Paper 30
104,690: Paper 28

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

THOMAS G. ECKHARDT,
JOHN W. GOTTO, DAVID K. McCLINTOCK, and
JANE V. SCOTT,

Junior Party,
(Patent 5,885,586),

v.

PAVEL NOVOTNY
by JAROSLAVA NOVOTNY¹,
JUAN ANTONIO MONTARAZ CRESPO, and
JURAJ IVANYI

Senior Party,
(Application 09/343,398).

Patent Interference No. 104,689 and 104,690

Before LEE, SPIEGEL, and GARDENER-LANE, Administrative Patent Judges.

GARDENER-LANE, Administrative Patent Judge.

JUDGMENT PURSUANT TO 37 CFR § 1.662

¹Jaroslava Novotny is said to be the administrator of the estate of Pavel Novotny (see Paper 25 in 08/470,590).

Senior party Novotny has filed a paper in each of related interferences 104,689 ("'689") and 104,690 ("'690") entitled "REQUEST FOR ENTRY OF ADVERSE JUDGMENT" ('689 at Paper 29 and '690 at Paper 27). In each paper Novotny states:

The party Novotny hereby abandons the contest. Accordingly, entry of adverse judgment against Novotny with respect to the subject matter at issue is requested.

The Novotny statements are treated as requests for adverse judgment under 37 CFR § 1.662(a).

We note that Eckhardt has filed preliminary motions 1 to 4 in each of interferences '689 and '690 ('689 at Papers 25-28 and '690 at Papers 23-26). Three of the preliminary motions filed in each interference are filed under 37 CFR § 1.633(a) and seek judgment that the Novotny claims are unpatentable. One of the preliminary motions filed in each interference is filed under 37 CFR § 1.633(g) and attacks the benefit accorded to Novotny in the Notice Declaring Interference (Paper 1 in each interference). Since Novotny has requested adverse judgment under 37 CFR § 1.662(a), Novotny is not entitled to a patent containing the claims that correspond to the count in each interference. It is unnecessary to decide if the Novotny claims are unpatentable on other grounds or if Novotny is entitled to the benefit accorded in the Notices Declaring the Interferences. Accordingly, the preliminary motions filed by Eckhardt in each interference are DISMISSED as moot.

ORDER

Upon consideration of the record of the interference, it is ORDERED that judgment on priority as to Count 1 in interference 104,689, the sole count in interference 104,689, is awarded against senior party PAVEL NOVOTNY by JAROSLAVA NOVOTNY, JUAN ANTONIO MONTARAZ CRESPO, and JURAJ IVANYI;

FURTHER ORDERED that senior party PAVEL NOVOTNY by JAROSLAVA NOVOTNY, JUAN ANTONIO MONTARAZ CRESPO, and JURAJ IVANYI, is not entitled to a patent containing claims 22-31 of US application 09/343,398, which correspond to Count 1 of the 104,689 interference;

FURTHER ORDERED that judgment on priority as to Count 1 in interference 104,690, the sole count in interference 104,690, is awarded against senior party PAVEL NOVOTNY by JAROSLAVA NOVOTNY, JUAN ANTONIO MONTARAZ CRESPO, and JURAJ IVANYI;

FURTHER ORDERED that senior party PAVEL NOVOTNY by JAROSLAVA NOVOTNY, JUAN ANTONIO MONTARAZ CRESPO, and JURAJ IVANYI, is not entitled to a patent containing claims 22, 24, 25, 28, and 30 of US application 09/343,398, which correspond to Count 1 of the 104,690 interference;

FURTHER ORDERED that preliminary motions 1 to 4 filed by Eckhardt in interference 104,689 and preliminary motions 1 to 4 filed by Eckhardt in interference 104,690 are DISMISSED as moot;

FURTHER ORDERED that a copy of this decision be given a paper number and be entered in the administrative records of Eckhardt's 5,885,586 and 5,885,587 patents and Novotny's 09/343,398 application; and

FURTHER ORDERED that if there is a settlement agreement, the parties are directed to 35 USC § 135(c) and 37 CFR § 1.666.

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JAMESON LEE)	
Administrative Patent Judge)	
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CAROL A. SPIEGEL)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
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_____)	
SALLY GARDENER-LANE)	
Administrative Patent Judge)	

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