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entered today is not binding precedent of the Board.

Paper 32

Filed by: Michael P. Tierney
Administrative Patent Judge
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
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Filed
September 25, 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

HIDEO **HADA**, HIROYUKI YAMAZAKI, YOSHIKI SUGETA,
HIROSHI KOMANO, KIYOSHI ISHIKAWA
SENIOR Party
(U.S. Patents 5,902,713, 6,022,666 and 6,063,953)
v.

KURT **DIETLIKER**, MARTIN KUNZ,
HITOSHI YAMATO, CHRISTOPH DE LEO
JUNIOR Party,
(U.S. Application 09/242,145).

Patent Interference No. 104,759

Before: MEDLEY, TIERNEY and NAGUMO, Administrative Patent Judges.

TIERNEY, Administrative Patent Judge.

FINAL JUDGMENT

As discussed in the Decision on Preliminary Motions, Hada has been accorded a priority benefit date of December 20, 1995 whereas Dietliker has been accorded a date of September 2, 1996 based on its Swiss CH 2147/96 application. Having determined the accorded priority benefit dates of the parties, Dietliker was placed under an Order to Show Cause why judgment

on priority as to Count 2, the sole count in interference, should not be entered against Dietliker. (Decision on Preliminary Motions, Paper No. 30). Specifically, Dietliker's involved U.S. application has a filing date of February 9, 1999 and under 35 U.S.C. §102(g)(1) and §104 Dietliker may not establish a date earlier than January 1, 1996 by reference to knowledge or use or other activity in a WTO country. As such, the evidence of record failed to establish that Dietliker is *prima facie* entitled to a judgment on priority relative to Hada.

Dietliker was to respond to the Order to Show Cause by no later than September 20, 2002. Dietliker has failed to respond. Accordingly, upon consideration of the record, and for the reasons given, it is:

ORDERED that judgment on priority to Count 2 (Order Redeclaring Interference, Paper No. 31, p. 3), the sole count in the interference, is awarded against Junior Party Dietliker.

FURTHER ORDERED that Junior Party Dietliker is not entitled to a patent containing claims 1-14 and 19-23 of Dietliker's involved U.S. Application No. 09/242,145.

FURTHER ORDERED that a copy of this final decision shall be placed and given a paper number in the file of Dietliker's U.S. Application No. 09/242,145 and Hada's U.S. Patents 5,902,713, 6,022,666 and 6,063,953.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

SALLY C. MEDLEY Administrative Patent Judge	)	
	)	
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	)	BOARD OF PATENT
MICHAEL P. TIERNEY Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
MARK NAGUMO Administrative Patent Judge	)	

cc (via Facsimile):

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