

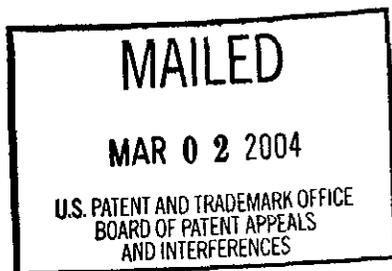
The opinion in support of the decision being entered today
is not binding precedent of the Board.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



BANGALORE A. NAGARAJ ET AL.,

Junior Party,
(Patent 5,427,866)

v.

DAVID S. RICKERBY ET AL.,

Senior Party,
(Application 08/608,502)

Patent Interference No. 104,817

Before: SCHAFER, CRAWFORD, and NAGUMO, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

Judgment

In our Decision of Preliminary Motions mailed concurrent with this paper, we made the determination that all of the Nagaraj and Rickerby involved claims are unpatentable over prior art.

An interference is declared when two parties have patentable claims to the same subject matter. A count is formed which represents the common patentable subject matter of the parties.

In this case, as all of the claims, including Rickerby's claim 16, which is the count, have been held unpatentable, there is no patentable subject matter common to both parties on which to base a count. Because neither party has patentable subject matter that corresponds to the count, no contest for priority as is contemplated by 35 U.S.C. §135 exists. See Conservolite, Inc. v. Widmayer, 21 F.3d 1098, 1100, 30 USPQ2d 1626, 1628 (Fed. Cir. 1994), Squires v. Corbett, 560 F.2d 424, 433, 194 USPQ 513, 519 (CCPA 1977). Therefore, we will not proceed to the priority phase of this interference.

Judgment

Judgment is hereby entered against the senior party, Rickerby on the grounds of unpatentability. Senior party Rickerby is not entitled to a patent containing claims 1, 2, 4 to 6, 12 to 16 and 18 to 21.

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