

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 21

By: Trial Section Merits Panel
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
Fax: 703-305-0942

Filed: December 11, 2002

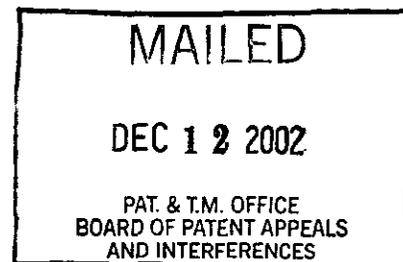
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

(Administrative Patent Judge Carol A. Spiegel)

MILTON ZAITLIN and
PETER PALUKAITIS

Junior party,
U.S. Patent 5,633,449
U.S. Patent 5,945,581



v.

CARL JOSEPH BRAUN, III,
CYNTHIA LOU HEMENWAY and
NILGUN EREKEN TUMER

Senior party,
Application 09/084,585

Patent Interference No. 105,030

Before: SCHAFFER, LEE and SPIEGEL, Administrative Patent Judges.

SPIEGEL, Administrative Patent Judge.

JUDGMENT PURSUANT TO 37 CFR § 1.662(a)

Upon consideration of "BRAUN REQUEST FOR ADVERSE JUDGMENT"

(Paper 19), it is

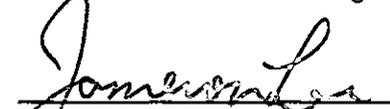
ORDERED that judgment on priority as to Count 1 (Paper 1, page 6), the sole count in the interference, is awarded against senior party CARL JOSEPH BRAUN, III, CYNTHIA LOU HEMENWAY and NILGUN EREKEN TUMER (**Braun**);

FURTHER ORDERED that senior party CARL JOSEPH BRAUN, III, CYNTHIA LOU HEMENWAY and NILGUN EREKEN TUMER (**Braun**) is not entitled to a patent containing claims 3-5, 7, 9, 10, 15-28 and 30 (corresponding to Count 1) of U.S. application 09/084,585, filed May 26, 1998, as a continuation of U.S. Patent 5,773,701, issued June 30, 1998, based on U.S. application 08/803,973, filed February 21, 1997, as a continuation of U.S. application 07/804,862, filed December 6, 1991, as a continuation of U.S. application 07/7712,912, filed October 4, 1991;

FURTHER ORDERED that a copy of this paper shall be made of record in files of U.S. application 09/084,585 and of U.S. Patents 5,633,449 and 5,945,581; and

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


RICHARD E. SCHAFER)
Administrative Patent Judge)


JAMESON LEE)
Administrative Patent Judge)


CAROL A. SPIEGEL)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

cc (via fax and first class mail):

Attorney for ZAITLIN (real party in interest
CORNELL RESEARCH FOUNDATION, INC.):

Michael L. Goldman, Esq.
Edwin V. Merkel, Esq.
NIXON PEABODY LLP
1300 Clinton Square
Rochester, New York 14604
Tel: 585-263-1304 (Goldman)
585-263-1128 (Merkel)
Fax: 585-263-1600
E-mail: mgoldman@nixonpeabody.com (Goldman)
emerkel@nixonpeabody.com (Merkel)

Attorney for BRAUN (real party in interest
MONSANTO TECHNOLOGY LLC and
MONSANTO COMPANY):

Patricia A. Kammerer, Esq.
Connie Flores Jones, Esq.
Janelled D. Waack, Esq.
HOWREY SIMON ARNOLD & WHITE, LLP
750 Bering Drive
Houston, TX 77057
Tel: 713-787-1438 (Kammerer)
713-787-1687 (Flores Jones)
713-787-1686 (Waack)
Fax: 713-787-1140
E-mail: kammererp@howrey.com (Kammerer)
floresc@howrey.com (Flores Jones)
waackj@howrey.com (Waack)