

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 21

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

HERMAN BIERINGER, ERWIN HACKER,
HEINZ KEHNE and LOTHAR WILLMS

Junior Party
(U.S. Patent No. 6,124,240),

v.

JUTTA GLOCK

Senior Party,
(U.S. Application No. 09/068,877).

Patent Interference No. 105,086 (MPT)

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

TIERNEY, Administrative Patent Judge.

FINAL JUDGMENT
(Pursuant to 37 CFR § 1.662(a))

Bieringer was Ordered to Show Cause why judgement on priority should not be entered

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BOARD OF PATENT APPEALS
AND INTERFERENCES**

against Bieringer. (Order, Paper No. 19). In response to this Order, Bieringer "hereby concedes priority as to Count 1." (Paper No. 20).

Under USPTO practice:

A party may, at any time during an interference, request and agree to entry of an adverse judgment. *The filing by a party of a* written disclaimer of the invention defined by a count, *concession of priority* or unpatentability of the subject matter of a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count *will be treated as a request for entry of an adverse judgment against the applicant* or patentee *as to all claims which correspond to the count*. Abandonment of an application, other than an application for reissue having a claim of the patent sought to be reissued involved in the interference, will be treated as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

37 C.F.R. §1.662(a), emphasis added. As set forth in the USPTO interference practice rules, Bieringer concession on priority is treated as a request for entry of an adverse judgment against all Bieringer claims that correspond to the count.

Count 1 is the sole count in interference. (Notice Declaring Interference, Paper No. 1, p. 5). Bieringer is involved in the interference based upon U.S. Patent No. 6,124,240. Claims 1-5, 11, 12, 14, 16 and 17 of Bieringer's involved patent correspond to Count 1 whereas claims 6-10, 13 and 15 do not correspond and do not form a part of the interference priority contest. As Bieringer has conceded priority as to Count 1, priority of invention is awarded against Bieringer as to Count 1 and Bieringer is not entitled to their patent claims 1-5, 11, 12, 14, 16 and 17 as they correspond to Count 1.

Bieringer has raised several allegations against Glock's application claims and invites the panel to remand the Glock application for consideration of these allegations. For example,

Bieringer requests that the Examiner consider "Motion Pursuant to 37 C.F.R. 1.633(a): Invalidity of claims 2-4 and 10-19 of U.S. Application Serial No. 09/068,877 under 35 U.S.C. §112, first paragraph, for lack of enablement." (Paper No. 20).

This interference is being terminated at a very early stage in the proceedings. Specifically, no preliminary motions have been filed and there are no motions pursuant to 37 C.F.R. 1.633(a) for the Examiner to consider. As no such motions were filed, Bieringer's patentability issues remain mere allegations on this record. No recommendation is made regarding Bieringer's "potential" motions. As always, however, the Examiner is to thoroughly examine the patentability of Glock's claims upon the return of the application from the Board.

Upon consideration of the record, it is:

ORDERED that judgment on priority as to Count 1 (Notice Declaring Interference, Paper No. 1, page 5), is awarded *against* Junior Party Bieringer et al.

FURTHER ORDERED that Junior Party Bieringer et al. is not entitled to a patent containing claims 1-5, 11, 12, 14, 16 and 17 of U.S. Patent No. 6,124,240.

FURTHER ORDERED that a copy of this final decision shall be placed and given a paper number in the file of Glock, U.S. Application No. 09/068,877 and Bieringer et al., U.S. Patent No. 6,124,240.

cc (via Facsimile):

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