

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

---

**AGILENT TECHNOLOGIES, INC.**  
(5,922,534 and 6,255,053),  
Junior Party,

v.

**AFFYMETRIX, INC.**  
(09/614,068),  
Senior Party.

---

Interference No. 105,089

---

Before SCHAFFER, TORCZON, and TIERNEY, Administrative Patent Judges.

TORCZON, Administrative Patent Judge.

**JUDGMENT**  
(PURSUANT TO 37 CFR § 1.662(a))

On 9 September 2003 at about 4 p.m. (Eastern), there was a telephone conference involving Kenneth Meyers for Agilent, Oliver Ashe and Phillip McGarrigle for Affymetrix, and Richard Torczon for the Board of Patent Appeals and Interferences regarding Agilent's preliminary motion 5 for judgment against all of Affymetrix's involved claims for unpatentability. Agilent conceded that, if Affymetrix's involved claims were unpatentable according to the motion, then its involved claims were also unpatentable. During the telephone conference, Affymetrix stated that, while it does not accept all of the fact statements and characterizations in the motion, it does not oppose the result that all involved claims be held unpatentable.

Both parties agreed to adverse judgment under 37 C.F.R. § 1.662(a), provided that such judgment not be construed as an admission of facts or characterizations in

any of the other pending motions. This judgment ends the interference before the filing of oppositions, in which the parties would ordinarily challenge the facts or characterizations in the motions. Given the entry of this judgment, further filings simply to challenge statements of fact would not be an effective use of anyone's resources. See 37 C.F.R. § 1.601 (requiring just, fast, and inexpensive administration). Instead, all other pending motions are dismissed as moot.

#### ORDER

Upon consideration of the Agilent preliminary motion 5, it is:

ORDERED that all pending motions other than Agilent preliminary motion 5 be DISMISSED as moot;

FURTHER ORDERED that junior party Agilent is not entitled to a patent containing claims 1-18 of its 5,922,534 patent, which correspond to Count 1;

FURTHER ORDERED that junior party Agilent is not entitled to a patent containing claims 1-5 of its 6,255,053 patent, which correspond to Count 1;

FURTHER ORDERED that senior party Affymetrix is not entitled to a patent containing claims 8-40 of its 09/614,068 application, which correspond to Count 1;

FURTHER ORDERED that the preliminary statements be returned; and

FURTHER ORDERED that a copy of this decision be entered in the administrative records of Agilent's 5,922,534 and 6,255,053 patents and of Affymetrix's 09/614,068 application.

RICHARD E. SCHAFER  
Administrative Patent Judge

RICHARD TORCZON  
Administrative Patent Judge

MICHAEL P. TIERNEY  
Administrative Patent Judge

BOARD OF  
PATENT  
APPEALS AND  
INTERFERENCES

INTERFERENCE  
TRIAL SECTION

cc (electronic mail):

For Agilent Techs., Inc.: **Kenneth J. Meyers** and **Arie M. Michelsohn** of FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

For Affymetrix, Inc.: **Oliver R. Ashe, Jr.** of GREENBLUM & BERNSTEIN, PLC and **Phillip L. McGarrigle** of AFFYMETRIX, INC.

**Notice:** Any agreement or understanding between parties to this interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the United States Patent and Trademark Office before termination of the interference as between said parties to the agreement or understanding. 35 U.S.C. 135(c); 37 C.F.R. § 1.661.