

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 94

Filed by: Trial Section Merits Panel  
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Filed  
11 February 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Mark Nagumo)

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STEVEN L. **STICE**,  
JOSE CIBELLI, JAMES ROBL,  
PAUL GOLUEKE, F. ABEL PONCE de LEON  
and D. JOSEPH JERRY,

Junior Party,  
(Patent 6,235,970 and  
Reissue Application 10/833,993),

v.

KEITH HENRY STOCKMAN **CAMPBELL**  
and IAN WILMUT,

Senior Party,  
(Application 09/989,126).

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Patent Interference No. 105,192

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Before: MCKELVEY, Senior Administrative Patent Judge, LANE, and  
NAGUMO, Administrative Patent Judges.

NAGUMO, Administrative Patent Judge.

**JUDGMENT**

### **I. Introduction**

The following findings of fact are supported by a preponderance of evidence in the record.

1. As a result of the findings of fact and conclusions of law set out in Paper 93 (Decision - substantive motions) of this interference, Stice is not entitled to a patent to any claims of its involved U.S. patent No. 6,235,970.

2. As a result of the findings of fact and conclusions of law set out in Paper 93 (Decision - substantive motions) of this interference, Stice is not entitled to a patent to any claims of Stice reissue application 10/833,993, which is based on the Stice 6,235,970 patent.

### **III. Discussion**

An interference is a proceeding to determine whether or not a patent may be issued to an applicant based on an application, all the claims of which are allowable but for the possibility that another first invented the same subject matter. 35 U.S.C. § 102(g). *Cf. Case v. CPC Int'l, Inc.*, 730 F.2d 745, 750, 221 USPQ 196, 200 (Fed. Cir. 1984) ("[n]o interference in fact means that there is no interfering subject matter, that Case's patent is no impediment to granting CPC the claims of its application.")

Stice is not entitled to any of its patented claims

corresponding to the count: thus, Stice patent 6,235,970 is not an impediment to the issuance of a patent to Campbell based on the 09/989,126 involved application. Similarly, Stice is not entitled to a patent on any of the claims in its reissue application: Thus, the Stice reissue application is not an impediment to the issuance of a patent to Campbell based on the 10/833,993 reissue application. Moreover, Campbell, as the senior party, is presumed to be entitled to the decision on priority.

Under these circumstances, no purpose would be served by proceeding to a priority contest in this interference.

## **II. Order**

In view of the findings of fact and conclusions of law set out in Paper 93 (Decision - substantive motions) of this interference, it is:

ORDERED that Steven L. Stice, Jose Cibelli, James Robl, Paul Golueke, F. Abel Ponce de Leon, and D. Joseph Jerry are not entitled to a patent containing claims 1-21 of U.S. Patent No. 6,235,970.

FURTHER ORDERED that Steven L. Stice, Jose Cibelli, James Robl, Paul Golueke, F. Abel Ponce de Leon, and D. Joseph

Jerry are not entitled to a patent on claims 1-11, 13 and 15-21 of reissue application 10/833,993.

FURTHER ORDERED that this judgment is final for purposes of appeal regarding the status of Stice's 6,235,970 patent.

FURTHER ORDERED that this paper be given an appropriate number and placed in the patent file of U.S. Patent 6,235,970, in the application file of 09/989,126, and in the reissue application file of 10/833,993.

FURTHER ORDERED that the reissue application is returned to the jurisdiction of the primary examiner for action not inconsistent with this decision.

FURTHER ORDERED that the attention of Campbell and the primary examiner is directed to related cases 09/989,178 and 09/989,125, both currently suspended;

FURTHER ORDERED that if there is a settlement, the attentions of the parties are directed to 35 U.S.C. § 135(c) and 37 CFR § 41.205.

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FRED E. MCKELVEY	)	
Senior Administrative Patent Judge	)	
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	)	BOARD OF
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SALLY GARDNER LANE	)	AND
Administrative Patent Judge	)	INTERFERENCES
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	)	TRIAL SECTION
_____	)	MERITS PANEL
MARK NAGUMO	)	
Administrative Patent Judge	)	

Alexandria, VA  
11 February 2005

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