

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper No. 145

Filed by: Merits Panel
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

SYDNEY GEORGE **CHAPMAN** and JULIAN HAMILTON JONES
Junior Party,
(Patent 6,216,228)

v.

GEOFFREY B. RHOADS
Senior Party.
(Application 10/118,849)

Interference No.105,209

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

JUDGMENT - MERITS - Bd. R. 125(a)
(Revised Judgment)

The Judgment (Paper No. 144) is vacated. The Judgment itself did not identify those claims found unpatentable in the Decision on Preliminary Motions (Interference No. 105,209, Paper No. 143). This Revised Judgment specifically identifies that Chapman claims 1-11 were

held unpatentable in the Decision on Preliminary Motions as well as based on priority.

Count 1 is the sole count in this interference. As discussed in the Decision on Preliminary Motions, Paper No. 143, Rhoads U.S. Application No. 08/637,531, filed April 25, 1996 is Rhoads earliest constructive reduction to practice for Count 1. Similarly, Chapman's earliest constructive reduction to practice for Count 1 is its GB Application 9708192, filed on April 23, 1997. Based upon the constructive reductions to practice, Chapman is the junior party in this interference.

Chapman filed a preliminary statement. (Paper No. 63). Chapman's preliminary statement alleges that the inventors of Chapman's involved patent first conceived of the subject matter of the count on January 4, 1996. (Paper No. 63, ¶ 6). Chapman alleges that:

The date after Chapman's conception of the invention when active exercise of diligence towards reducing the invention to practice began is 25 April 1996.

(Paper No. 63, ¶ 8).

Chapman's alleged diligence date of April 25, 1996 is also the date of Rhoads accorded priority benefit. Accordingly, Chapman has failed to allege a date of priority of invention upon which it can prevail in this interference. Specifically, under 35 U.S.C. § 102(g), reasonable diligence need be established "from a time prior to conception by the other." 35 U.S.C. § 102(g)(2).

The interference rules provide that:

If a junior party fails to file a priority statement overcoming a senior party's accorded benefit, judgment shall be entered against the junior party absent a showing of good cause.

37 C.F.R. § 41.204(a)(3). As Chapman has failed to file a priority statement overcoming Rhoads accorded benefit date of April 25, 1996 or a showing of good cause as to why such a deficiency should be excised, we enter judgment on priority against Chapman.

Upon consideration of the record, it is:

ORDERED that Junior Party Chapman claims 1-11 are unpatentable over prior art.

(Decision on Preliminary Motions, Paper No. 143).

FURTHER ORDERED that judgment on priority as to Count 1 (Notice Declaring Interference, Paper No. 1), the sole count in the interference, is awarded *against* Junior Party Chapman.

FURTHER ORDERED that Junior Party Chapman is not entitled to a patent containing claims 1-11 of U.S. Patent No. 6,216,228, which corresponds to Count 1 (Paper No. 1).

FURTHER ORDERED that a copy of this final decision shall be placed and given a paper number in the file of Chapman, U.S. Patent No. 6,216,228 and Rhoads, U.S. Application No. 10/118,849.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135 (c).

cc: (via Facsimile):

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