

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 115

Filed by: Motions Panel
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

(Administrative Patent Judge Sally Gardner Lane)

H. KIRK HAMMOND,
FRANK J. GIORDANO, and WOLFGANG H. DILLMANN
Junior Party,
(Patents 5,792,453, 6,100,242, and 6,174,871),

v.

JEFFREY M. LEIDEN
and ELIAV BARR
Senior Party,
(Application 09/371,683).

Patent Interference No. **105,217**

Before: TORCZON, GARDNER LANE and TIERNEY, Administrative Patent Judges.

TIERNEY, Administrative Patent Judge.

FINAL JUDGMENT - Bd. R. 127

An Order to Show Cause (Paper No. 112) was issued on July 11, 2005. In the Order, Junior Party Leiden was directed to show cause why this case must proceed to the question of priority given that Leiden is junior to Hammond by more than two years. Specifically, based

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upon the Decision on Preliminary Motions (Paper No. 110), Hammond has an earliest accorded constructive reduction to practice date of June 17, 1995, whereas Leiden has an earliest accorded constructive reduction to practice date of November 18, 1997.

Leiden timely filed its response to the order to show cause on July 29, 2005. Leiden's response is as follows:

In response to the Order, Party Leiden requests that the Board make its Decision final.

(Paper No. 114, p. 2).

Upon consideration of the record, it is:

ORDERED that Junior Party Leiden '683 claims 29, 30, 32-47 and 62 are held unpatentable over prior art. (Decision on Preliminary Motions, Paper No. 110).

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 Leiden.

FURTHER ORDERED that Junior Party Leiden is not entitled to a patent containing claims 29, 30 and 32-62 of U.S. Patent Application 09/371,683, which correspond to Count 1 (Paper No. 1).

FURTHER ORDERED that Leiden Substantive Motion 2, requesting that Hammond '453 claims 29-31, 38-40, Hammond '242 claims 6, 21-23, 35, 50, 51, 53, 63, 78-81 and 86-110 and Hammond '871 claim 17 be designated as corresponding to Count 1 is dismissed as *moot*.

FURTHER ORDERED that Hammond Substantive Motions 1, 2 and 3 requesting that certain Hammond '453, '242 and '871 claims be designated as not corresponding to Count 1 are dismissed as *moot*.

FURTHER ORDERED that a copy of this final decision shall be placed and given a paper number in the file of Hammond U.S. Patent Nos. 5,792,453, 6,100,242, and 6,174,871 and Leiden, U.S. Patent Application 09/371,683.

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

/ss/ Richard Torczon)
RICHARD TORCZON)
Administrative Patent Judge)

/ss/ Sally Gardner Lane) BOARD OF PATENT
SALLY GARDNER LANE) APPEALS AND
Administrative Patent Judge) INTERFERENCES

/ss/ Michael P. Tierney)
MICHAEL P. TIERNEY)
Administrative Patent Judge)

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