

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 151

Filed by: Trial Division Merits Panel
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

AJINOMOTO CO., INC.,
Junior Party
(Ishii)
IFW Application 09/355,980,

v.

THE NUTRASWEET COMPANY,
Senior Party
(Pajor)
Patent 6,048,999.

Patent Interference No. 105,246 (RES)

Before PATE, SCHAFFER and GAUDETTE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

JUDGMENT UNDER 37 CFR § 41.127

- 1 Pursuant to a decision on motions entered even date herewith, the panel has granted a
2 NutraSweet motion that all claims of junior party Ajinomoto are unpatentable for obviousness.
3 The panel has further determined that junior party Ajinomoto shall not be entitled to further

1 contest priority in this interference, inasmuch as Ajinomoto relied upon erroneous and
2 misleading evidence before the examining corps in establishing the allowability of the Ajinomoto
3 claims and requesting interference.

4 It was our determination that but for the filing of the Kawauchi declaration, and the
5 examiner's reliance thereupon, the interference would not have been declared in the first
6 instance. The materiality of the erroneous and misleading declaration is established by the
7 examiner's apparent actual reliance thereon. The significance of the Kawauchi declaration is
8 more fully discussed in Paper 150.

9 Accordingly, we have chosen to treat the filing of an erroneous and misleading
10 declaration during *ex parte* prosecution which resulted in the declaration of an interference as a
11 threshold issue under 37 CFR § 41.201, depriving the junior party of standing in this
12 interference. We note that the issues expressly listed in the rule are not exclusive, and that the
13 wording of the rule leaves open the possibility that other conduct of a party would deprive that
14 party of standing in an interference. Filing of an erroneous and misleading declaration in *ex parte*
15 prosecution is similar to other threshold issues enumerated in the rule in that the enumerated
16 threshold issues deal with instances where an interference should not have been declared. It is our
17 determination that this is such an instance. We therefore terminate this interference with a
18 judgment against Ajinomoto.

1 **ORDER**

2 It is hereby:

3 **ORDERED** that judgment in Interference No.105,246 as to count 1, the sole count in
4 interference, is awarded against the junior party, Shoichi Ishii and Tetsuji Shimizu.

5 **FURTHER ORDERED** that the junior party, Shoichi Ishii and Tetsuji Shimizu, is not
6 entitled to a patent containing claims 15-40 of the involved application, 09/355,980.

7 **FURTHER ORDERED** that a copy of this judgment shall be made of record in
8 application 09/355,980 and patent 6,048,999.

9
10 /ss/ William F. Pate, III)

11 WILLIAM F. PATE, III)

12 Administrative Patent Judge)

13)

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15)

16 /ss/ Richard E. Schafer)

17 RICHARD E. SCHAFER)

18 Administrative Patent Judge)

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21)

22 /ss/ Linda M. Gaudette)

23 LINDA M. GAUDETTE)

24 Administrative Patent Judge)

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BOARD OF PATENT
APPEALS
AND
INTERFERENCES

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