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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JAMES S. MAGDYCH, TARIK RAHMANOVIC,
JOHN R. McDONALD, BROCK E. TELLIER,
ANTHONY C. OSBORNE and NISHAD P. HERATH

Junior Party
(Patent 6,513,122)¹

v.

SUSAN PITTMAN DARK

Senior Party
(Application 09/572,112)²

Patent Interference No. 105,271

Before LEE, TORCZON and MEDLEY, Administrative Patent Judge.

LEE, Administrative Patent Judge.

Judgment – Bd. Rule 127(b)

Junior party Magdych has filed a paper conceding priority to senior party Dark (Paper No. 39). Senior party Dark has filed a paper withdrawing its Motions 1 and 2 alleging unpatentability of Magdych's claims corresponding to the count. What remains pending is junior party Magdych's Substitute Substantive Motion 1 alleging the unpatentability of senior party's claims.

¹ Based on Application 09/895,500, filed June 29, 2001. The real party in interest is Network Associates Technology, Inc.

² Filed May 17, 2000. The real party in interest is Deep Nines, Inc.

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In connection with junior party's Motion 1, in a telephone conference call counsel for the parties have agreed to the administrative patent judge's suggestion to have it dismissed with an instruction to the senior party to bring it to the examiner's attention and to provide a copy of the motion together with all supporting evidence to the examiner immediately upon return of the junior party's application to the examiner after entry of judgment in this interference.

It is now time appropriate to enter judgment. Accordingly, it is

ORDERED that junior party Magdych's concession of priority is treated as a request for entry of adverse judgment and the request is **granted**;

FURTHER ORDERED that judgment as to the subject matter of the count is herein entered against junior party JAMES S. MAGDYCH, TARIK RAHMANOVIC, JOHN R. McDONALD, BROCK E. TELLIER, ANTHONY C. OSBORNE and NISHAD P. HERATH;

FURTHER ORDERED that the junior party JAMES S. MAGDYCH, TARIK RAHMANOVIC, JOHN R. McDONALD, BROCK E. TELLIER, ANTHONY C. OSBORNE and NISHAD P. HERATH is not entitled to claims 1-12 of its involved Patent No. 6,513,122, which correspond to Count 1;

FURTHER ORDERED that junior party's Substitute Substantive Motion 1 is herein dismissed because in light of the judgment on priority there is no need for the Board to consider in an interference proceeding what is purely a patentability issue that may be considered by the patent examiner;

FURTHER ORDERED that within twenty (20) days of the date of this judgment the senior party Dark shall (1) file a paper in its involved application to bring to the examiner's attention junior party's Substitute Substantive Motion 1, (2) provide to the examiner a copy of that motion together with all supporting Exhibits, and (3) ask the examiner to consider the prior art relied on in that motion;

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FURTHER ORDERED that if there is a settlement agreement, the parties should note the requirements of 35 U.S.C. § 135(c) and Bd. Rule 205;

FURTHER ORDERED that a copy of this judgment be filed in the respective involved application or patent of the parties.

March 24, 2005

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By Facsimile:

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