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Paper 10

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

DMITRI KAPITONOV AND **ROBERT K. YU**
Junior Party
(U.S. Patent No. 6,280,989),

v.

MASAKI SAITO
Senior Party
(U.S. Application No. 10/309,389)(MPT).

Patent Interference No. 105,389
(Technology Center 1600)

JUDGMENT - REQUEST FOR ADVERSE - Bd. R. 127(b)

Before: Medley, Tierney and Moore, Administrative Patent Judges

Tierney, Administrative Patent Judge.

Junior Party Kapitonov has filed Paper No. 9, entitled "Request for Adverse Judgment under 37 C.F.R. 41.127." In the request, a Mr. Michael Whitham, Reg. No. 32,635, identifies himself as lead counsel for Virginia Commonwealth University, which is the Assignee of the involved Kapitonov 6,280,989 patent. According to Mr. Whitham, Kapitonov "has chosen not to

oppose the declared interference, and, based on this decision chooses to abandon the contest under 37 C.F.R. 41.127(b)(4).”

A request for abandonment of the contest under 37 C.F.R. 41.127(b)(4) is construed as a request for adverse judgment. 37 C.F.R. 41.127(b). Accordingly, upon consideration of Kapitonov’s Request for Adverse Judgment, it is hereby:

ORDERED that judgment on priority as to Counts 1 and 2, the only counts in interference, is awarded against Junior Party Kapitonov.

FURTHER ORDERED that Junior Party Kapitonov is not entitled to a patent containing claims 1-3, 6-7 and 9-13 of U.S. Patent No. 6,280,989 (claims 1-3, 6-7 and 9-12 corresponding to Count 1 and 1-3, 6-7 and 9-13 corresponding to Count 2).

FURTHER ORDERED that a copy of this paper shall be made of record in the files of application 10/309,389 and U.S. Patent No. 6,280,989.

FURTHER ORDERED that should there be a settlement agreement, the parties attention is directed to 35 U.S.C. §135(c) and 37 C.F.R. §41.205.

/Sally C. Medley/)
ADMINISTRATIVE PATENT JUDGE)
)
)
/Michael P. Tierney/) BOARD OF PATENT
ADMINISTRATIVE PATENT JUDGE) APPEALS AND
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)
)
/James T. Moore/)
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