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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

PAN S. JUNG and DAPHNA R. YANIV

Junior Party
(U.S. Patent No. 5,587,523)¹

v.

VIRGIL B. ELINGS, JOHN A. GURLEY
and
DROR SARID

Senior Party
(Application 08/781,467)²

Patent Interference No. 105,396

Before LEE, MEDLEY and MOORE, Administrative Patent Judges.

LEE, Administrative Patent Judge.

Judgment – Bd. Rule 127(b)

¹ Based on Application 08/427,353, filed 02/15/95. Accorded the benefit of Application 08/190,948, filed 02/03/94. The real party in interest is Agilent Technologies, Inc.

² Filed 01/10/97. Accorded the benefit of Application 08/394,792, filed 02/27/95; Application 07/687,684, filed 04/19/91; and Application 07/442,256, filed 11/28/89. The real party in interest is VEECO, INC.

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On March 23, 2006, junior party Jung filed a paper (Paper 27) in which it conceded priority of the subject matter of the count. In the same paper, junior party Jung requested entry of adverse judgment with respect to all of its claims corresponding to the count, i.e., claims 17, 34, 36 and 37. Per 37 CFR § 41.127(b)(3), a concession of priority of the contested subject matter is construed as a request for entry of adverse judgment with respect to that contested matter, i.e., the subject matter of the count. Accordingly, it is

ORDERED that junior party Jung's request for entry of adverse judgment with respect to its involved claims 17, 34, 36 and 37 is **dismissed** as moot in light of its concession of priority with respect to the subject matter of the count;

FURTHER ORDERED that the concession of priority is construed as a request for entry of adverse judgment with respect to Count 1 and that the request is herein **granted**;

FURTHER ORDERED that judgment as to the subject matter of Count 1 is herein entered against junior party PAN S. JUNG and DAPHNA R. YANIV;

FURTHER ORDERED that junior party PAN S. JUNG and DAPHNA R. YANIV is not entitled to its patent claims 17, 34, 36 and 37 which correspond to Count 1;

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; and

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

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Jung v. Elings

<u>/ss/ Jameson Lee</u>)	
JAMESON LEE)	
Administrative Patent Judge)	
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<u>/ss/ Sally C. Medley</u>)	BOARD OF PATENT
SALLY C. MEDLEY)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
<u>/ss/ James T. Moore</u>)	
JAMES T. MOORE)	
Administrative Patent Judge)	

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By Electronic Transmission

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