

Mail Stop Interference
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Filed: 11 July 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ANDRX LABS, LLC
Junior Party
(U.S. Patent 6,869,615),

v.

ASTRAZENECA AB
Senior Party
(U.S. Application 10/620,000).

Patent Interference No. 105,533 (MPT)
(Technology Center 1600)

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

1
2 Before: Lee, Medley and Tierney, *Administrative Patent Judges*.
3
4 Tierney, *Administrative Patent Judge*.

5
6 Andrx Labs (“Andrx”) has conceded priority of invention as to the
7 subject matter of Count 1, the sole count in interference but reserves the
8 right to raise all challenges and defenses in any other proceeding against
9 Astra’s involved patent application. (Andrx Concession on Priority, Paper

1 26). To the extent Andrx's concession attempts to avoid interference
2 estoppel, we direct Andrx's attention to *Shustack v. Szum*, 78 USPQ2d 1566
3 (Bd. Pat. App. & Int. 2005) and *Eli Lilly and Co. v. Cameron*, 61 USPQ2d
4 1863 (Bd. Pat. App. & Int. 2001).

5 It is:

6 **ORDERED** that judgment on priority as to Count 1, the sole count in
7 interference (Redeclaration, Paper 22), is awarded against Junior Party
8 Andrx.

9 **FURTHER ORDERED** that Junior Party Andrx is not entitled to
10 claims 1-9, 20-24 and 26 of U.S. Patent 6,869,615, all of which correspond
11 to Count 1.

12 **FURTHER ORDERED** that a copy of this paper shall be made of
13 record in the files of Andrx, U.S. Patent 6,869,615 and AstraZeneca, U.S.
14 Application 10/620,000.

15 **FURTHER ORDERED** that the parties' attention is directed to 35
16 U.S.C. §135(c) and Bd. R. 205.

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19 /Jameson Lee/)
20 JAMESON LEE)
21 Administrative Patent Judge)

22)
23)

24 /Sally C. Medley/) BOARD OF PATENT
25 SALLY C. MEDLEY) APPEALS AND
26 Administrative Patent Judge) INTERFERENCES

27)
28)

29 /Michael P. Tierney/)
30 MICHAEL P. TIERNEY)
31 Administrative Patent Judge)

1 cc (via electronic filing):

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