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Paper 37
16 October 2007

UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,574

ATHENIX CORPORATION
(10/739,610 and 11/517,991),
Junior party,

v.

PEKING UNIVERSITY
(7,214,535),
Senior party.

Before: McKELVEY, *Senior Administrative Patent Judge*, and SCHAFER
and TORCZON, *Administrative Patent Judges*.

TORCZON, *Administrative Patent Judge*.

JUDGMENT
Bd.R. 127(b)
NO CONTEST

Peking University has filed a notice of no contest. Paper 35. Failure to contest is construed to be a request for adverse judgment.

Bd.R. 127(b)(4). In the absence of a priority contest under 35 U.S.C. 102(g)(1), we see no reason to prolong this proceeding.

The parties should bear in mind their obligations under 35 U.S.C. 135(c) to reduce any agreements or understandings regarding this interference to writing and file the agreement or understanding with the

United States Patent and Trademark Office before the termination of the interference.

In view of Peking University's notice, it is—

ORDERED that adverse judgment be entered against Peking University for count 1, the sole count (Paper 26);

FURTHER ORDERED that all of the claims (1-23) of Peking University's involved 7,214,535 patent be canceled, 35 U.S.C. 135(a); and

FURTHER ORDERED that a copy of this judgment be entered in the administrative records of the involved patent and applications.

cc:

For Athenix Corporation: W. Murray Spruill, Alston & Bird, LLP, of Raleigh, North Carolina, with Blas P. Arroyo, of Charlotte, North Carolina.

For Peking University: John W. Freeman and Frederick H. Rabin, Fish & Richardson, P.C., of Boston, Massachusetts.