

1 Mail Stop Interference  
2 P.O. Box 1450  
3 Alexandria Va 22313-1450  
4 Tel: 571-272-4683  
5 Fax: 571-273-0042  
6

Filed 14 April 2008

Paper 27

7 UNITED STATES PATENT AND TRADEMARK OFFICE  
8 BEFORE THE BOARD OF PATENT APPEALS  
9 AND INTERFERENCES  
10

11 DAVID VINCENT **ZYZAK**,  
12 ROBERT ALAN SANDERS, MARKO STOJANOVIC,  
13 DAVID CAMMIADE, PETER YAU TAK LIN,  
14 MARIA DOLORES MARTINIZE-SERNA VILLAGRAN,  
15 JOHN KEENEY HOWIE, and  
16 RICHARD GERARD SCHAFERMEYER  
17

18 Junior Party  
19 (Application 10/606,137),  
20

21 v.  
22

23 VINCENT ALLEN **ELDER**,  
24 JOHN GREGORY FULCHER, and  
25 HENRY KIN-HANG LEUNG  
26

27 Senior Party  
28 (Patent 7,037,540).  
29

30 Patent Interference No. 105,579  
31 (Technology Center 1700)  
32

33 Before Schafer; Lane, and Moore, Administrative Patent Judges.  
34

35 Lane, Administrative Patent Judge.  
36

37 **Judgment– Arbitration – Bd.R. 126(f)**  
38

39 The parties have filed an arbitrator's decision. (Paper 25).<sup>1</sup> In that  
40 decision, the arbitrator concluded that junior party Zyzak "was both first to  
41 conceive and first to reduce to practice the subject matter of the count [i.e., count  
42 1]" and that "priority of invention lies with" Zyzak. (Paper 25 at 9).  
43

44  
45  

---

1 The parties were authorized to undertake arbitration under Bd. R. 126 (Paper 23) and the parties filed an agreement to arbitrate. (Paper 24).

1 The parties agree that judgment should be entered against senior party  
2 Elder. (Paper 26 at 2).

3 It is

4 ORDERED that judgment on priority as to Count 1 (Paper 1 at 4),  
5 the sole count of the interference, is entered against senior party Elder;

6 FURTHER ORDERED that claims 1-13 of Elder patent 7,037,540  
7 be CANCELLED, 35 U.S.C. § 135(a);

8 FURTHER ORDERED that the parties are directed to 35 U.S.C.  
9 § 135(c) and Bd. R. 205 regarding the filing of settlement agreements; and

10 FURTHER ORDERED that a copy of this judgment and the  
11 arbitration award shall be entered into the administrative record of Elder patent  
12 7,037,540 and Zyzak application 10/606,137.

13

14 /Richard E. Schafer/ )

15 RICHARD E. SCHAFER )

16 Administrative Patent Judge )

17 )

18 )

19 /Sally Gardner Lane/ )

20 SALLY GARDNER LANE )

21 Administrative Patent Judge )

22 )

23 )

24 /James T. Moore/ )

25 JAMES T. MOORE )

26 Administrative Patent Judge )

27

28

29

30

31

32

33

34

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

1 cc (electronic filing):  
2  
3 Counsel for Zyzak:  
4  
5 S. Robert Chuey, Esq.  
6 THE PROCTER & GAMBLE COMPANY  
7 Sharon Woods Technical Center  
8 11511 Reed Hartman Highway  
9 Cincinnati, OH 45241  
10 Tel: 513-626-3841  
11 Email: [chuey.sr@pg.com](mailto:chuey.sr@pg.com)  
12  
13 Counsel for Elder:  
14  
15 Charles L. Gholz, Esq.  
16 OBLON, SPIVAK, McCLELLAND,  
17 MAIER & NEUSTADT, P.C.  
18 1940 Duke Street  
19 Alexandria, VA 22314  
20 Tel : 703-413-3000  
21 Email : [cgholz@oblon.com](mailto:cgholz@oblon.com)  
22 Email : [cahoon@cclaw.com](mailto:cahoon@cclaw.com)  
23 Email : [jkelly@oblon.com](mailto:jkelly@oblon.com)  
24