

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JUSTIN K. BRASK
and ROBERT B. TURKOT, JR.

Appeal No. 2006-0286
Application 10/272,624

ON BRIEF

Before GARRIS, WARREN and WALTZ, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

We remand the application to the examiner for consideration and explanation of issues raised by the record. 37 CFR §41.50(a)(1) (2005); Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., Rev. 3, August 2005).

The record shows that the examiner rejected appealed claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Hembree et al. and the admitted prior art at page 1 of appellants' specification as applied to claim 11, further in view of Rabkin et al. in the final rejection mailed December 23, 2004 (page 3), and maintained this ground of rejection in the answer (page 4).

Appellants state in the brief that the present appeal includes appealed claim 15 (page 5), but do not include the above ground of rejection among the grounds for review on appeal (page 9) and do not argue the ground (page 10; reply brief, pages 1-2).

The examiner erroneously states that appellants' "statement of the grounds of rejection is correct" (answer, page 3), and does not otherwise point out the deficiency with respect to the ground of rejection of appealed claim 15 in the brief.

37 CFR § 41.37(c)(1)(vi) and (vii) (September 2004) provide that the appeal brief must set forth a "statement of each ground of rejection presented for review" and "[t]he contentions of appellant with respect to each ground of rejection presented for review," respectively. *See* MPEP § 1205.02 (8th ed., Rev. 3, August 2005; 1200-14 – 1200-15). Where appellants do not present a ground of rejection for review in the brief, the appeal is considered to be withdrawn with respect to that ground and the "withdrawal is treated as an authorization to cancel the withdrawn claims." MPEP §§ 1214.05 and 1215.03 (8th ed., Rev. 3, August 2005).

37 CFR § 41.37(d) (September 2004) provides that appellants will be notified of any deficiency in the brief under the rules and provided with the opportunity to correct the deficiency. *See* MPEP § 1205.03 (8th ed., Rev. 3, August 2005).

Accordingly, the examiner is required to take appropriate action consistent with current examining practice and procedure to notify appellants of the deficiency in the brief with respect to the ground of rejection of appealed claim 15 that we have discussed above and provide appellants with the opportunity to cure the same in order to avoid withdrawal of the appeal and its consequences with respect to this claim, with a view toward placing this application in condition for decision on appeal with respect to the issues presented.

This remand is *not* made for the purpose of directing the examiner to further consider the grounds of rejection.

We hereby remand this application to the examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

This application, by virtue of its “special” status, requires immediate action. It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal in this case. *See* MPEP § 708.01(D) (8th ed., Rev. 3, August 2005).

Remanded

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
)	
)	
CHARLES F. WARREN)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

Appeal No. 2006-0286
Application 10/272,624

Timothy N. Trop
Trop, Prunner & Hu, P.C.
STE 100
8554 Katy Fwy
Houston, TX 77024-1841