

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-0849
Application No. 09/945,764

ON BRIEF

Before WALTZ, JEFFREY T. SMITH, and FRANKLIN, *Administrative Patent Judges*.

WALTZ, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

Upon review of the image file wrapper record for this application, we determine that this appeal is not ready for decision at this time. Accordingly, pursuant to the authority and provisions of 37 CFR § 41.50(a)(1)(2004), we *remand* this application to the jurisdiction of the examiner to take action consistent with the following remarks.

This application involves an appeal under 35 U.S.C. § 134 from the primary examiner's final rejection of claims 1 through 19, which are the only claims pending in this application.

There are two rejections under 35 U.S.C. § 103(a) that have been appealed by appellant, both of which rely on Tomiya et al. (Tomiya), Japanese application no. 10-147075, published on June 2, 1998, as a primary reference (Answer, pages 3 and 5). The examiner relies on both the “Abstract and English translation” of Tomiya as the primary evidence of obviousness (*id.*). However, the “Abstract” is clearly not a complete description of Tomiya. Furthermore, the “translation” is a “document [that] has been translated by computer” where the “translation may not reflect the original precisely” and the “Japan Patent Office is not responsible for any damages caused by the use of this translation” (unnumbered page 1). This computer translation is incomprehensible (e.g., see claim 1 on unnumbered page 1 of the translation). Although appellant has submitted a partial translation of Tomiya (Reply Brief, Exhibit G, translation of ¶[0065] through ¶[0072]), this partial translation still does not complete the record in this appeal.

Therefore this application is *remanded* to the jurisdiction of the examiner to ensure that the record is complete, i.e., to enter a full, comprehensible English translation of Tomiya into the record.

This application, by virtue of its “special” status, requires an immediate action, *MPEP*, § 708.01 (D), p. 700-131, Rev. 3, August 2005. It is important that the Board be promptly informed of any action affecting the appeal in this application.

REMANDED

THOMAS A. WALTZ)
Administrative Patent Judge)
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) BOARD OF PATENT
JEFFREY T. SMITH) APPEALS
Administrative Patent Judge) AND
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BEVERLY A. FRANKLIN)
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APPEAL NO. - JUDGE KRATZ
APPLICATION NO.

APJ KRATZ

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DECISION: ED

Prepared By:

DRAFT TYPED: 01 Aug 06

FINAL TYPED: