

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 JULIA VALLES CAMPS and XAVIER MIQUEL GUTIERREZ

Appeal No. 2006-1167
Application No. 09/948,601

ON BRIEF

Before PAK, KRATZ and DELMENDO, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

REMAND TO THE EXAMINER

A Request for Reconsideration of a Decision on Petition¹ mailed February 01, 2006 was filed via facsimile transmission on April 25, 2006. The petition was construed as a petition under 37 CFR § 1.181 in the Decision mailed February 01, 2006.

Accordingly, we have no jurisdiction over the Request for Reconsideration and remand this application to the jurisdiction of Technology Center 3600 for appropriate processing of that Request.

¹ The "Reply Brief" was construed as a petition under 37 CFR § 1.181. See Decision on Petition mailed February 01, 2006.

As an additional matter for the examiner, we noted in our earlier Remand (mailed January 11, 2005) that appellants maintain that:

the examiner erred in numbered item 7 at page 3 of the answer in asserting that no statement as to why the claims do not stand or fall together was presented in the brief. The examiner should also review that matter to determine if an additional explanation of the rejection(s) as to any separately argued claims is necessary to make out a prima facie case of anticipation and/or obviousness, and/or to rebut the arguments thereagainst furnished by appellants."

The examiner has not responded to that portion of our earlier remand. In particular, we note that appellants state at page 4 of the brief that the claims do not stand or fall together and have furnished separate arguments for each of the claims subject to a § 102 rejection maintained by the examiner at pages 11 and 12 of the brief. Moreover, appellants furnish separate arguments for each of the claims subject to a § 103 rejection maintained by the examiner at pages 14-18 of the brief.

Thus, the examiner's statement at numbered item 7 of page 3 of the answer is clearly incorrect.

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Accordingly, we remand this application to the examiner for further consideration and corrective action with respect to this latter matter. 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)).

Upon return of this application to the examiner and after final resolution of the request for reconsideration of the decision on petition by the appropriate office personnel, the examiner should take action to correct the erroneous statement at numbered item 7 of page 3 of the answer. If the grounds of rejection set forth in the answer are maintained, the examiner should respond fully to appellants' separate arguments in favor of patentability for each of the rejected claims and for each ground of rejection maintained by the examiner to the extent that the examiner has not already furnished a response to each of those arguments in the answer.

The examiner may employ a supplemental answer to effect that corrective action if the examiner maintains the rejections in the answer and prosecution is not otherwise reopened. In any supplemental examiner's answer prepared in response to this remand, the examiner should clearly identify the prior art being relied upon, and any full translations being employed for non-

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English language documents being relied upon, with references to page and line numbers of any such full translation of a relied upon non-English language reference, as is appropriate.

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) is made for further consideration of a rejection. **Accordingly,**

37 CFR §

41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REMANDED

CHUNG K. PAK)
Administrative Patent Judge)
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) BOARD OF PATENT
PETER F. KRATZ) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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APPEAL NO. - JUDGE KRATZ
APPLICATION NO.

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DECISION: ED

Prepared By:

DRAFT TYPED: 01 Aug 06

FINAL TYPED: