

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 ANDREW JAY SKOOG, JANE ANN MURPHY
and TIMOTHY RAY LATTIRE

Appeal No. 2006-1961
Application No. 10/726,357

ON BRIEF

Before KIMLIN, WALTZ and FRANKLIN, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

REMAND TO THE EXAMINER

This is an appeal from the final rejection of claims 1-22.

Under the heading GROUNDS OF REJECTION in the examiner's answer, the examiner lists three rejections based on Skoog et al. U.S. Patent No. 6,720,034. In particular, claims 1-5 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 2, 4-6 and 7 of U.S. Patent No. 6,720,034. Claims 1-9 and 16-18 stand rejected under the judicially created doctrine of obviousness-type double patenting

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as being unpatentable over claims 1-16 of U.S. Patent No. 6,720,034 in view of Rigney. In addition, claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagaraj in view of Klabunde, Kirk-Othmer, Rigney and Skoog et al.

The examiner also states at page 3 of the answer that "[t]he examiner has withdrawn the provisional obvious double patenting rejection to claims 1-5 in view of the terminal disclaimer filed 6/9/2005" (first paragraph).

Accordingly, it can be seen that the examiner's answer contains inconsistencies with respect to the rejections based on U.S. Patent No. 6,720,034. Manifestly, if appellants have filed an effective terminal disclaimer regarding U.S. Patent 6,720,034, the examiner's double patenting and Section 103 rejections based on the patent are inappropriate.

Consequently, this application is remanded to the examiner to resolve the inconsistencies noted above with respect to the rejections over U.S. Patent No. 6,720,034, and the effectiveness of appellants' terminal disclaimer in removing the patent as a basis for rejection.

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This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) 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.

REMANDED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
THOMAS A. WALTZ)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
BEVERLY A. FRANKLIN)	
Administrative Patent Judge)	

ECK/hh

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