

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 JOHN R. DOUCEUR, WILLIAM J. BOLOSKY,
and MARVIN M. THEIMER

Appeal 2007-0208
Application 10/855,112
Technology Center 2100

Decided: April 30, 2007

Before KENNETH W. HAIRSTON, HOWARD B. BLANKENSHIP, and
ALLEN R. MACDONALD, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

A preliminary review of the record before us leads us to conclude that this case is not in condition for a decision on appeal. Accordingly, we hereby remand the application to the Examiner for input concerning the rejections of record.

In the final rejection, the following rejections were listed by the Examiner:

(1) Claim 5 is provisionally rejected under the judicially created doctrine of double patenting;

(2) Claims 1 to 8 are rejected under 35 U.S.C. § 101 for nonstatutory subject matter; and

(3) Claims 1 to 8 are rejected under 35 U.S.C. § 103(a) for obviousness.

Appellants' brief responded to all of the rejections in the final rejection.

In the Answer, the following rejections were listed by the Examiner:

(1) Claim 5 is provisionally rejected under the judicially created doctrine of double patenting; and

(2) Claims 1 to 4 are rejected under 35 U.S.C. § 103(a) for obviousness.

Appellants' reply brief responded to all of the rejections in the Answer.

The Answer is completely silent as to the nonstatutory subject matter rejection of claims 1 to 8, and the obviousness rejection of claims 5 to 8. If the nonstatutory subject matter rejection of claims 1 to 8, and the obviousness rejection of claims 5 to 8 are not still rejections of record, then the Examiner should state in the record why the two rejections were withdrawn. Thus, the application is hereby remanded to the Examiner for an explanation as to what rejections are of record in this appeal.

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This application, by virtue of its “special” status, requires an immediate action. *See* MPEP § 708.01. It is important that the Board be informed promptly of any action affecting the appeal in this case.

REMANDED

ELD

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