

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERNHARD FELTEN and HOLGER PRIES

Appeal No. 2007-4112
Application No. 10/947,062
Technology Center 3700

Decided: June 18, 2008

Before WILLIAM F. PATE, III, MURRIEL E. CRAWFORD and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

PATE, *Administrative Patent Judge*.

ORDER DISMISSING APPEAL

STATEMENT OF THE CASE

BACKGROUND

Appellants filed a brief in support of this appeal on February 21, 2006.

Appellants appealed the rejection of claims 1-8, 15-20, 22, 23, and 27-32. These were all the claims remaining in the application. The ground of rejection in the Final Office Action was that all claims stood rejected under 35 U.S.C. § 103 as

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unpatentable over Patent No. 6,332,730 to Taghavi-Khanghah in view of DE 7021575 (English Abstract only).

Before the Examiner completed the Answer, he learned that GB 1237176 to Yates was an English language equivalent of the above-noted German published application, and he obtained a copy. We note that the German application was provided to the USPTO by Appellants in the first instance. In reviewing Yates, the Examiner determined that all claims on appeal lacked novelty over the Yates disclosure. Pursuant to 37 C.F.R. § 41.39(a)(2), the Examiner included a new ground of rejection based on the Yates disclosure in the Answer mailed May 22, 2006.

37 C.F.R. § 41.39(b) provides Appellants with two choices when a new ground of rejection is introduced in an Examiner's Answer. Appellants must either reopen prosecution (37 C.F.R. § 41.39(b)(1)) or file a reply brief responsive to the new ground of rejection (37 C.F.R. § 41.39(b)(2)). Appellants have neither filed a reply brief nor reopened prosecution. 37 C.F.R. § 41.39(b)(2) provides that an appeal shall not be maintained in the situation where appellants have not filed a reply brief. Inasmuch as the new ground of rejection involves all claims on appeal, pursuant to the operation of 37 C.F.R. § 41.39(b)(2) this appeal shall not be maintained.

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ORDER

Accordingly, it is so ordered that this Appeal stands DISMISSED.

JRG

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000