

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID I. POISNER, JAMES A. SUTTON,
and DAVID W. GRAWROCK

Appeal 2008-0110
Application 10/116,923¹
Technology Center 2100

Decided: August 19, 2008

Before JOSEPH L. DIXON, JAY P. LUCAS, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

THOMAS, C., *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

The Examiner issued an Examiner's Answer on October 18, 2006.
Appellants replied to the Answer on December 18, 2006 with a RESPONSE
UNDER 37 C.F.R. § 1.111 AND REQUEST TO REOPEN PROSECUTION.
In addition, Appellants concurrently filed an INFORMATION DISCLOSURE

¹ Filing date: April 5, 2002. The real party in interest is Intel Corporation.

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STATEMENT UNDER 37 C.F.R. § 1.97 stating that the IDS was being submitted before the mailing of a final Office Action. We find that this IDS submission further shows Appellants' intent to reopen prosecution.

In response, the Examiner issued an Office communication on March 16, 2007 stating: "The examiner notes the reply brief filed on December 18, 2006 which has been entered and made part of the record." We consider the Examiner's indication of Appellants' Response under § 1.111 as a Reply Brief inappropriate.

37 C.F.R. § 41.50(a)(2)(i) states the following:

A request [to reopen prosecution] that complies with this paragraph will be entered and the application or the patent under *ex parte* reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

Accordingly, we consider the appeal to be withdrawn, and we remand the application to the Examiner for the purpose of acting on Appellants' *expressed* request to reopen prosecution.

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We hereby remand this application to the Examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

REMANDED

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