

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BARRY GAMMON

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Appeal 2008-1420  
Application 10/783,812  
Technology Center 3700

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Decided: June 13, 2008

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Before HUBERT C. LORIN, LINDA E. HORNER, and  
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

Gammon (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-6. We have jurisdiction under 35 U.S.C. § 6(b) (2002). This appeal includes a record that is not ripe for review and pursuant to 37 C.F.R. § 41.50(a)(1) (2007), we remand this application to the

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Examiner to take appropriate action consistent with our comments below.  
37 C.F.R. §§ 41.35(b) and 41.50(a)(1) (2007).

The record is not ripe for review for the following reason.

The Appellant, in the Appeal Brief filed on September 15, 2006, did not respond to the Examiner's position in the Final rejection mailed on July 21, 2005, see page 6, that the declaration was insufficient to overcome the 35 U.S.C. § 102(b) rejection, for which it was submitted. The Appellant, nevertheless, see Appeal Brief at page 8, makes a cursory cite to that same declaration during the discussion of the 35 U.S.C. § 102(b) rejection. The Examiner, in the Answer, should have, but did not, then explicitly address this cursory cite to the declaration. In order to make the record clear, the Examiner should clarify whether he maintains the position he took in the Final rejection that the declaration is insufficient to overcome the 35 U.S.C. § 102(b) rejection.

#### ORDER

Accordingly, it is ORDERED that the application is remanded to the Examiner:

- 1) for the Examiner to clarify the Examiner's position regarding the declaration submitted by the Appellant as Appendix B to the Appeal Brief.
- 2) for such further action as may be appropriate.

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This remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) applies if a Supplemental Examiner's Answer is written in response to this remand by the Board.

REMANDED

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