

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 42

Filed by: Merits Panel  
Senior Administrative Patent Judge  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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SONG Q. SHI,

Junior Party,<sup>1</sup>

v.

NORIKAZU NAKAMURA and SHINICHI WAKABAYASHI,

Senior Party.<sup>2</sup>

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Patent Interference No. 103,799

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Before: METZ, Administrative Patent Judge, and  
McKELVEY, Senior Administrative Patent Judge, and  
HANLON, Administrative Patent Judge.

McKELVEY, Senior Administrative Patent Judge.

**FINAL DECISION**

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<sup>1</sup> Application 08/886,553, filed August 11, 1997. The real party in interest is Motorola, Inc.

<sup>2</sup> Application 08/337,219, filed November 7, 1994. The real party in interest is Shinko Electric Industries Co., Ltd.

**A. Background**

Junior party Shi is involved in this interference on the basis of his continuation-in-part application 08/886,553, filed August 11, 1997 (the '553 application), which was substituted in the interference during the preliminary motion period for Shi application 08/304,451, filed September 12, 1994 (the '451 application). The '451 application has since become abandoned by way of an express abandonment.

Senior party Nakamura is involved in the interference on the basis of his application 08/337,219, filed November 7, 1994.

The counts in this interferences are Count 4 and Count 5, which read:

Count 4

**Benzoxazole-based device**

An EL device in accordance with claim 5 of the Nakamura application,

or

an organic light emitting device in accordance with claim 1 of Shi application '553,

or

a method of fabricating an organic light emitting device according to claim 10 of Shi application '553.

Count 5

**Benzothiazole-based device**

An EL device in accordance with claim 6 of the Nakamura application,

or

an organic light emitting device in accordance with claim 11 of Shi application '553,

or

a method of fabricating an organic light emitting device according to claim 20 of Shi application '553.

**B. Claims which correspond and do not correspond to the counts**

The claims of the parties and their correspondence to the counts are as follows:

1. The claims of the parties are:

Shi '553            1-39

Nakamura        4-10

2. The claims of the parties which correspond to Count 4 are:

Shi '553            1-10

Nakamura        4-5 and 7-9

3. The claims of the parties which do not correspond to Count 4 are:

Shi '553            11-39

Nakamura 6 and 10

4. The claims of the parties which correspond to Count 5 are:

Shi '553 11-20

Nakamura 4 and 6-10

5. The claims of the parties which do not correspond to Count 5 are:

Shi '553 1-10 and 21-39

Nakamura 5

**C. Requests for judgment**

Junior party Shi has requested entry of an adverse judgment with respect to Count 4 and the claims of the Shi '553 application which correspond to Count 4. See Paper No. 41 and 37 CFR § 1.662(a).

Senior party Nakamura has requested entry of an adverse judgment with respect to Count 5 and the claims of the Nakamura application which correspond to Count 5. See Paper No. 40 and 37 CFR § 1.662(a).

**D. Judgment**

Upon consideration of the record, it is

ORDERED that judgment with respect to Count 4 is awarded in favor of Senior Party Norikazu Nakamura and Shinichi Wakabayashi and against Junior Party Song Q. Shi.

FURTHER ORDERED that Junior Party Song Q. Shi is not entitled to a patent containing claims 1-10 of application 08/886,553, filed August 11, 1997.

FURTHER ORDERED that, on this record, Senior Party Norikazu Nakamura and Shinichi Wakabayashi is entitled to a patent containing claim 5 of application 08/337,219, filed November 7, 1994.<sup>3</sup>

FURTHER ORDERED that judgment with respect to Count 5 is awarded in favor of Junior Party Song Q. Shi and against Senior Party Norikazu Nakamura and Shinichi Wakabayashi.

FURTHER ORDERED that, on this record, Junior Party Song Q. Shi is entitled to a patent containing claims 11-20 of application 08/886,553, filed August 11, 1997.

FURTHER ORDERED that Senior Party Norikazu Nakamura and Shinichi Wakabayashi is not entitled to a patent containing claims 4 and 6-10 of application 08/337,219, filed November 7, 1994.

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ANDREW H. METZ, )  
Administrative Patent Judge )  
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<sup>3</sup> Senior Party Norikazu Nakamura and Shinichi Wakabayashi is not entitled to a patent containing claims 4 and 7-9, which correspond to Count 4, because those claims also correspond to Count 5. An adverse judgment is being entered against Senior Party Norikazu Nakamura and Shinichi Wakabayashi with respect to Count 5.

FRED E. McKELVEY, Senior ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS AND  
 ) INTERFERENCES  
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ADRIENE L. HANLON )  
Administrative Patent Judge )

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