

The opinion in support of the decision being entered today was not written for publication journal and is not binding precedent of the Board.

Paper No. 128

Box Interferences

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ELIZABETH G. NABEL and GARY J. NABEL
Junior Party
(Application 08/210,902)

v.

TOREN FINKEL, RAUL J. GUZMAN, RONALD G. CRYSTAL
and STEPHEN E. EPSTEIN
Senior party
(Application 08/136,113)

Patent Interference No. 103,815

JUDGMENT

Interference 103,815

PATE, METZ and ELLIS, Administrative Patent Judges.

ELLIS, Administrative Patent Judge.

On February 26, 2003, junior party, Nabel et al., submitted a concession of priority and requested entry of an adverse judgment as to claims 1, 3-8, 12 and 14, designated as corresponding to the count. Paper No. 125.

Accordingly, JUDGMENT as to the subject matter of Count 1 in issue is hereby awarded to senior party, TOREN FINKEL, RAUL J. GUZMAN, RONALD G. CRYSTAL and STEPHEN E. EPSTEIN.

Accordingly, junior party, ELIZABETH G. NABEL and GARY J. NABEL, is not entitled to a patent containing claims 1, 3-8, 12 and 14, corresponding to the count.

Interference 103,815

On this record, senior party, TOREN FINKEL, RAUL J. GUZMAN, RONALD G. CRYSTAL and STEPHEN E. EPSTEIN, is entitled to a patent containing claims 1-15, 17, 18 and 21 (see, Decision on Motion, Paper No. 102, p. 13).¹

Andrew H. Metz)	
Administrative Patent Judge)	
)	
)	BOARD OF PATENT
William F. Pate, III)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
Joan Ellis)	
Administrative Patent Judge)	

[by fax and first class mail]

¹ The APJ granted Nabel's preliminary motion 1 (Paper No. 42) for judgment on the ground that Finkel et al.'s claims 19 and 20 are unpatentable under 35 U.S.C. § 112, first paragraph, as being based on a specification that fails to provide an adequate written description of the invention. Paper No. 102, pp. 13-14. Finkel did not (i) oppose the motion in this regard, (ii) file a request for reconsideration of the APJ's decision (37 C.F.R. § 1.640(c)), or (iii) request a review of the motion at final hearing (37 C.F.R. § 1.640(a)). Accordingly, the finding of the APJ stands unchallenged.

Interference 103,815

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