

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 24

Filed by: Interference Trial Section Merits Panel
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Filed:
November 20, 2001

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

DEBABRATA MUKHERJEE
and CLIFFORD M. KAUFMANN,

Junior Party
(Application 08/872,927),

v.

STEVEN D. KLOOS,

Senior Party,
(Patent 5,759,639).

Patent Interference No. 104,665

Before: SCHAFER, TORCZON and GARDNER-LANE, Administrative Patent Judges.

SCHAFER, Administrative Patent Judge.

FINAL JUDGMENT

Murkherjee, the junior party, did not file a preliminary statement or any preliminary motions. In a telephone conversation with paralegal specialist Yolunda Townes on November 6, 2001, counsel for Mukherjee stated that no additional papers would be filed. Mukherjee is, therefore, restricted to the effective filing date of its application. Because it did not file a preliminary statement, Mukherjee is not permitted to prove that it made the invention prior to its filing date (37 CFR § 1.629(c)(2)(i)) or to present a case-in-chief (37CFR § 1.651(c)(2)). Since Mukherjee did not file

Upon consideration of the fact that Casale is now junior party and has not filed a preliminary statement (see Paper 36), it is

ORDERED that judgment on priority as to Count 1, the sole count in the interference, is awarded against junior party Andrew J. Casale and Richard V. C. Carr.

FURTHER ORDERED that junior party Andrew J. Casale and Richard V. C. Carr is not entitled to a patent containing claims 1-4 (corresponding to Count 1) of U.S. Patent 5,714,634, issued 3 February 1998, based on application 08/671,559, filed 25 June 1996.

FURTHER ORDERED that a copy of this paper shall be made of record in files of application 09/149,379 and U.S. Patent 5,714,634.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

_____)	
FRED E. McKELVEY, Senior)	
Administrative Patent Judge)	
)	
)	
_____)	
RICHARD E. SCHAFER)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
_____)	
JAMESON LEE)	
Administrative Patent Judge)	

104,557
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