

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 80

Filed by: Trial Section Merits Panel
Mail Stop Interference
P.O. Box 1450
Alexandria, VA 22313-1450
Tel: 703-308-9797
Fax: 703-305-0942

Filed: 15 June 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ROY E. **JAZOWSKI** and EDWARD H. DECKER,
Junior Party,
(Application 09/730,476),

v.

FRANK M. **STEPNIAK** and LARRY N. SIEBENS,
Senior Party,
(Patent 6,168,447).

Patent Interference No. 105,087

Before MARTIN, LEE, and MEDLEY, Administrative Patent Judges.

MEDLEY, Administrative Patent Judge.

JUDGMENT-RULE 662

Based on our decision on preliminary motions, Stepniak was granted priority benefit of its 5,957,712 patent with respect to Substitute Count 1 (Paper 75 at 27)¹. In its opposition 2 at 6-7,

¹ The time for filing a request for reconsideration of the decision on preliminary motions, our Decision of Stepniak's response to the Rule 641 Order, or this judgment, commences with the date of this paper.

Jazowski stated that it would be unable to demonstrate priority of invention with respect to the Substitute Count 1 (See also Paper 75 at 26). The representation is a concession of priority and is treated as a request for entry of adverse judgment against Jazowski. See 37 CFR § 1.662(a).

Accordingly, it is

ORDERED that judgment on priority as to Substitute Count 1 (Paper 77 at 2) is awarded against junior party ROY E. **JAZOWSKI** and EDWARD H. DECKER.

FURTHER ORDERED that junior party ROY E. **JAZOWSKI** and EDWARD H. DECKER is not entitled to a patent containing claims 25-27 (corresponding to Substitute Count 1) of application 09/730,476.

FURTHER ORDERED that a copy of this paper shall be made of record in files of application 09/730,476 and U.S. Patent 6,168,447.

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

_____)
JOHN C. MARTIN)
Administrative Patent Judge)
)
)
)
)
)
)
_____)
JAMESON LEE)
Administrative Patent Judge)
)
)
)
)
_____)
SALLY C. MEDLEY)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

cc (via facsimile and e-mail):

Counsel for JAZOWSKI:

Mark S. Bicks, Esq.
ROYLANCE, ABRAMS, BERDO
& GOODMAN LP
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036

Fax: 202-659-9344
e-mail: mbicks@roylance.com
agoodman@roylance.com

Counsel for STEPNIAK:

Charles R. Hoffmann, Esq.
HOFFMAN & BARON LLP
6900 Jericho Turnpike
Syosset, N.Y. 11791

Fax: 516-822-3582
e-mail: crhdocket@hoffmannbaron.com
Gthdocket@hoffmannbaron.com