

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte FREIDON MEHRAD and KYLE A. PICONE

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Appeal No. 2001-1371  
Application No. 09/120,712

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ON BRIEF

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Before FLEMING, RUGGIERO, and GROSS, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants request that we reconsider our decision of July 31, 2003 wherein we sustained the Examiner's obviousness-type double patenting rejection of claims 1-7, 13 and 14 over claims 1-9 of U.S. Patent No. 5,659,900 to Mehrad. A review of Appellants' request reveals that no actual errors in our original decision have been asserted by Appellants. Indeed, the sum and substance of Appellants' request is the submission of a terminal

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disclaimer in an attempt to obviate the obviousness-type double patenting rejection. While a timely filed terminal disclaimer in compliance with 37 CFR § 1.321(c) may be effective in overcoming an obviousness-type double patenting rejection, the review of the appropriateness of any such terminal disclaimer lies within the jurisdiction of the Examiner.

In response to Appellants' request, we have reviewed our original decision and find no errors therein, nor, as discussed above, have Appellants alleged any errors exist. Accordingly, we have granted Appellants' request to the extent that we have reconsidered our decision of July 31, 2003, but we deny the request with respect to making any changes therein.

REMAND TO THE EXAMINER

As discussed supra, Appellants have included a terminal disclaimer in their request for rehearing of the Board decision of July 31, 2003. We hereby remand this application to the Examiner for consideration of the terminal disclaimer and to take any other appropriate action as necessary.

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This application, by virtue of its "special" status requires immediate action. See Manual of Patent Examining Procedure (MPEP) 708.01 (8<sup>th</sup> Ed., Rev. 1, Feb. 2003). It is important that the Board be informed promptly of any action affecting the appeal in this application (e.g., abandonment, issue, reopening prosecution).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING - DENIED  
REMANDED

MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	
	)	
	)	
JOSEPH F. RUGGIERO	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

JFR/hh

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