

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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JAMES A. MICHAEL, DAVID T. FREDERICK  
and H. THOMAS GRAEF

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Appeal No. 2004-0387  
Application No. 09/384,650

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ON BRIEF

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Before OWENS, TIMM, and JEFFREY T. SMITH, ***Administrative Patent Judges.***

JEFFREY T. SMITH, ***Administrative Patent Judge.***

***ON REQUEST FOR REHEARING***

Appellants have filed a paper under 37 CFR § 1.197(b) requesting that we reconsider our decision of June 23, 2004.

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Applicants' reconsideration request is based on inconsistent statements concerning the status of appealed claims 44, 50, 51 and 59. According to Appellants, Request page 2, the decision indicates that the Examiner's rejection of claims 50, 51 and 59, page 42, has been reversed. However, in the conclusion, appearing on page 45 of the decision, indicates the rejection of the aforementioned claims have been affirmed. Appellants also request that the record state that the subject matter of claims 50, 51 and 59 is patentable over the cited references. (Request, p. 3).

According to Appellants, the decision, pages 39 and 46, indicates that the rejection of claim 44 has been reversed. (Request p. 3). Appellants assert that the decision does not include an affirmed rejection that includes claim 44. Thus, Appellants request that the record state that the subject matter of claim 44 is patentable over the cited references. (Request, p. 3).

We have reconsidered our decision in light of all of the arguments made in the Appellants' request. We now clarify the record by indicating that our statements in the body of the original decision page 42 are correct, while the statement in the conclusion, page 45, is incorrect. Thus, we

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modify our decision to indicate the rejection of claims 50, 51 and 59 under § 103 over the combination of Higham and Blechl is reversed.

We also modify our decision to indicate that the statement appearing in the paragraph bridging pages 44 and 45 should read as follows: we conclude the subject matter of claims 40 to 43, 45 to 47, 49, 52 to 54 and 56 to 58 and 60 to 67 is not patentable over the cited references. The subject matter of claims 44, 48, 50, 51, 55 and 59 is patentable over the cited references.



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RALPH E. JOCKE  
231 SOUTH BROADWAY  
MEDINA, OH 44256