

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

FEB 27 1995

Ex parte HARRY L. MALECH, KAREN J.
LOMAX, DANIEL ROTROSEN
and HIROYUKI NUNOI

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 93-2710
Application 07/331,652¹

ON BRIEF

Before McKELVEY, Chief Administrative Patent Judge, and WINTERS
and GRON, Administrative Patent Judges.

BY THE BOARD.

ORDER

This appeal was taken from the examiner's final
rejection of claims 1 through 5, 7 through 16, 18 through 22, and
24 through 26 on non-prior art grounds.

¹ Application for patent filed March 31, 1989.

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In the Answer, paragraph bridging pages 4 and 5, the examiner withdraws the provisional rejection of all the appealed claims under the judicially created doctrine of obviousness-type double patenting over claims 1 through 25 of copending application Serial No. 07/527,767. Likewise, the examiner withdraws the rejection of claims 10 through 12 under 35 USC 112, second paragraph, as indefinite.

The issues remaining for review are: (1) whether the examiner correctly rejected claims 1 through 5, 7 through 16, 18 through 22, and 24 through 26 under 35 USC 112, first paragraph, as based on a specification which does not provide adequate, written descriptive support for the invention now claimed and as further based on a non-enabling disclosure; and (2) whether the examiner correctly entered a provisional double patenting rejection of claims 1, 3, 4, 10 through 16, 18, and 21 under 35 USC 101 as claiming the same invention recited in claims 1 through 6, 9 through 20, 23, and 24 of copending application Serial No. 07/527,767.

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On consideration of the entire record, we reverse the examiner's rejections essentially for the reasons stated in appellants' main brief and reply brief before the Board.

REVERSED

Fred McKelvey
FRED E. MCKELVEY, Chief)
Administrative Patent Judge)

SD Winters
SHERMAN D. WINTERS)
Administrative Patent Judge)

Teddy S. Gron
TEDDY S. GRON)
Administrative Patent Judge)

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