

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY G. HELENTJARIS
and
GRETCHEN J. KING

Appeal No. 1994-1755
Application 07/525,312¹

ON BRIEF

Before WINTERS and WILLIAM F. SMITH, and LORIN, Administrative Patent Judges.
WILLIAM F. SMITH, Administrative Patent Judge.

REQUEST FOR REHEARING

A decision was entered in this appeal on June 9, 1999, reversing the decision of the examiner. In our opinion, we noted "OTHER ISSUES" which the examiner should consider upon return of the application. In requesting rehearing under 37 CFR

¹ Application for patent filed May 18, 1990. According to appellants, the application is a continuation of Application 07/143,298, filed January 7, 1988; which is a continuation of Application 06/938,378, filed December 9, 1986; which is a continuation of Application 06/498,464, filed May 26, 1983, all abandoned.

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§ 1.197(b), appellants do not ask that we reconsider our reversal of the examiner's decision. Rather, appellants request that we reconsider and withdraw the remarks made under the "OTHER ISSUES." We decline to do so.

In seeking rehearing, appellants do not question our authority to raise "OTHER ISSUES" in addition to making a decision on the merits. We note that our appellate reviewing court has taken similar action. See, e.g., In re Deuel, 51 F.2d 1552, 1560, 34 USPQ2d 1210, 1216 (Fed. Cir. 1995).

As set forth in the paragraph bridging pages 8-9 of our opinion, the issues raised should be considered by the examiner in the first instance. We did not take and do not take a position on the merits. We trust that upon return of the application the examiner will take into account our decision of June 9, 1999, in its entirety as well as appellants' comments filed in their request for rehearing and will take whatever action is deemed appropriate.

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We have considered appellants' request for rehearing but decline to change our decision.

DENIED

Sherman D. Winters)	
Administrative Patent Judge)	
)	
)	
William F. Smith)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
Hubert C. Lorin)	
Administrative Patent Judge)	

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