

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(2) is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHRISTOPHER H. STROLLE,  
CHANDRAKANT B. PATEL,  
WERNER F. WEDAM, JUNG WAN KO,  
RAYMOND SCHNITZLER and  
JONH KYUNG YUN

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Appeal No. 1995-3702  
Application 07/787,690<sup>1</sup>

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ON BRIEF

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Before THOMAS, RUGGIERO and GROSS, Administrative Patent  
Judges.

THOMAS, Administrative Patent Judge.

ON REQUEST FOR REHEARING

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<sup>1</sup> Application for patent filed November 4, 1991.  
According to applicants, this application is a continuation-  
in-part of Application 07/635,029, filed December 28, 1990,  
now Patent No. 5,037,361, issued August 6, 1991; which is a  
continuation-in-part of Application 07/569,029, filed August  
17, 1990, now Patent No. 5,113,262, issued May 12, 1992.

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This is a decision on rehearing of our original decision in this appeal dated November 22, 1999, listed as Paper No. 43 in the file. On December 22, 1999, appellants filed a request for reconsideration of our earlier decision. We consider this request for reconsideration as a request for rehearing within 37 CFR § 1.197.

Without belaboring the point, our earlier decision reversed the rejection of certain claims under the first paragraph of 35 U.S.C. § 112 as well as different rejections of various claims under 35 U.S.C. § 103. We did, however, sustain a rejection of claims 1 through 92 and 119 through 154, which amounted to all claims on appeal, under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8, 9, 10, 18, 20 and 21 of appellants' prior U.S. Patent No. 5,113,262 to Strolle. Page 4 of our original opinion indicated that in accordance with the statements made in the various briefs, appellants did not contest the rejection. We also noted there that appellants

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expressed a willingness to file a terminal disclaimer to obviate the rejection. As of the date of our decision, no terminal disclaimer had been filed in the present application.

Rule § 1.197(b) governs the consideration of request for rehearing. Inasmuch as appellants do not assert that there is any error in or are any points that we misapprehended or overlooked in rendering our original decision, we find no present reason to change our original decision affirming the rejection of all claims on appeal based upon the obviousness-type double patenting rejection. Appellants also have presented no reason why the terminal disclaimer was not presented before our original decision date, especially since appellants had basically indicated in all the various briefs filed that they acceded to the rejection. On the other hand, since the terminal disclaimer filed on the same date as the request for reconsideration presents matters properly decided by the examiner, we therefore remand the application to the examiner for consideration of the merits of, entry and proper processing of the terminal disclaimer.

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In view of the foregoing, appellants' request for rehearing is granted to the extent that we have in fact reviewed our findings but is denied as to making any change therein. This application is also remanded to the examiner for consideration of the merits of, entry and proper processing of the terminal disclaimer.

This application, by virtue of its "special" status, requires an immediate action. Manual of Patent Examining Procedure (MPEP) § 708.01(d)(7th ed., July 1998).

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

DENIED and REMANDED

	James D. Thomas	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Joseph F. Ruggiero	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
	Anita Pellman Gross	)	
	Administrative Patent Judge	)	

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