

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(2) is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVIN STOWELL
AND MICHAEL CALLAHAN

Appeal No. 96-2818
Application 07/985,918¹

HEARD: August 5, 1997

Before McCANDLISH, Senior Administrative Patent Judge, and
LYDDANE and NASE, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

¹ Application for patent filed December 4, 1992. This application is designated as a Reissue of application Serial No. 07/710,466, filed June 5, 1991, and a continuation of application Serial No. 07/710,446, filed June 5, 1991, which is now Patent No. RE 34,194, granted March 16, 1993, which is a Reissue of application Serial No. 07/498,729, filed March 26, 1990, now Patent No. 4,974,286, granted December 4, 1990.

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DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1 through 12 in this reissue application. No other claims are pending in the application.

Appealed claims 1 through 12 stand rejected under the first and second paragraphs of 35 U.S.C. § 251. There are no other rejections of the appealed claims before us. Accordingly, the only issue in this appeal is the propriety of the examiner's rejection under § 251.

Prior to filing the subject reissue application, appellants filed a first broadening reissue application (07/985,918) on June 5, 1991. After the subject reissue application was filed, the first reissue application matured into Reissue Patent No. RE 34,194 on March 16, 1993.

In support of his rejection, the examiner's main position is that having already granted one reissue patent on the original patent, the Commissioner of Patents and Trademarks lacks statutory authority to now grant another reissue patent. Reference is made to the examiner's answer and to the office action dated April 19, 1995 (Paper No. 19) for further details of the examiner's rejection.

Subsequent to the examiner's answer, appellants filed a

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petition (Paper No. 35) seeking to change the status of the subject application to that of a "continuation" application in addition to a "reissue of a reissue" in order to claim the benefit of the filing date of the parent reissue application under 35 U.S.C. § 120. In the Commissioner's decision dated November 19, 1997 (Paper No. 36), appellants' petition was granted, and the amendment accompanying the petition (see Paper No. 34) was entered to formally change the status of the subject application to a continuation as well as a reissue of a reissue.

Based on the current status of the subject reissue application, along with the surrender of appellants' first reissue patent, the issuance of a reissue patent on the subject application will not result in the grant of a second reissue patent while the first is still in effect, thus rendering moot the basis for the examiner's rejection under § 251. For these reasons we will not sustain the standing rejection of the appealed claims.

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The examiner's decision rejecting the appealed claims is
therefore reversed.

REVERSED

HARRISON E. McCANDLISH, Senior))	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
WILLIAM E. LYDDANE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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