

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 83

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

NEAL A. SCHWARZBERGER

Junior Party
(application 08/787,763)¹

v.

STEVEN J. ROOT, KENNETH HERRING,
WILLIAM ROGERS, KIRK YEDINAK,
CHARLES SMITH, and FURMAN E. BURGESS

Senior Party
(Application 08/829,836)²

Patent Interference No. 104,100

McKELVEY, Senior Administrative Patent Judge, and SCHAFER and LEE, Administrative Patent Judges.

LEE, Administrative Patent Judge.

¹ Filed January 28, 1997. The real party in interest is A.B.M. International, Inc.

² Filed April 1, 1997. Accorded the benefit of application 08/652,110, filed May 23, 1996. The real party in interest is Diversified Systems, Inc.

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JUDGMENT

On June 12, 2000, junior party Schwarzberger filed a paper entitled "Concession of Priority" (Paper No. 79) in which it is stated that "Party Schwarzberger requests adverse judgment with respect to the Count and all claims designated as corresponding to the Count." It is assumed that party Schwarzberger is referring to its own claims which correspond to the count.

The request is **granted**.

In our decision on preliminary motions, rendered on December 13, 1999, we held unpatentable party Root's claims 11, 14, 19 and 20. Party Root requested reconsideration of the holding with respect to its claims 11, 14, and 20. On even date herewith and in a separate paper, we have denied party Root's request for reconsideration. (Paper No. 82). According to the scheduling order proposed by the parties on February 15, 2000, and formally approved by the Board on April 13, 2000, the due date for the parties to identify all issues to be considered at final hearing was May 20, 2000. Party Root did not identify our holding of unpatentability with respect to its claims 11, 14, 19 and 20 as an issue for

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consideration at final hearing. Party Schwarzberger did not identify our only granting-in-part its preliminary motion 1 as an issue for consideration at final hearing. Consequently, it is also now appropriate to enter final judgment against party Root but only with respect to its claims 11, 14, 19 and 20.

It is

ORDERED that judgment on priority with respect to the subject matter of the count is entered against junior party Schwarzberger;

FURTHER ORDERED that junior party NEAL A. SCHWARZBERGER is not entitled to a patent containing its claims 1-10 which correspond to the count;

FURTHER ORDERED that judgment is herein entered against senior party STEVEN J. ROOT, KENNETH HERRING, WILLIAM ROGERS, KIRK YEDINAK, CHARLES SMITH, and FURMAN E. BURGESS, but only with respect to its claims 11, 14, 19 and 20; and

FURTHER ORDERED that senior party STEVEN J. ROOT, KENNETH HERRING, WILLIAM ROGERS, KIRK YEDINAK, CHARLES SMITH, and FURMAN E. BURGESS is not entitled to a patent containing its claims 11, 14, 19 and 20.

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Fred E. McKelvey, Senior)
Administrative Patent Judge)

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Richard E. Schafer)
Administrative Patent Judge)

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Jameson Lee)
Administrative Patent Judge)

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AND
INTERFERENCES

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By Federal Express

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