

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 30

Filed by: Trial Section Merits Panel  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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JAY P. MONACO, JULIUS I. PERCHETS,  
and MARK P. SCOTT

**Junior Party**  
(Application 08/843,014)<sup>1</sup>

v.

HARRY B. KALINA, CHARLES T. BOMGARDNER,  
and RICHARD N. HODGES

**Senior Party.**  
(Patent No. 5,642,823)<sup>2</sup>

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Patent Interference No. 104,267

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**JUDGMENT**

On March 31, 2000, junior party Monaco filed a paper entitled "Abandonment of the Contest" (Paper No. 29) in which

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<sup>1</sup> Filed April 11, 1997. Assigned to Keystone Industries, Inc.

<sup>2</sup> Based on application 08/666,920, filed June 9, 1996. Assigned to FM Industries, Inc.

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it is stated: "Junior Party Monaco et al. (Monaco) hereby abandons the contest as to the sole Count (Count 1) in this interference pursuant to 37 C.F.R. § 1.662." Under 37 CFR § 1.662(a), the abandonment of contest is treated as a request for entry of adverse judgment against junior party Monaco.

Paper No. 29 further includes party Monaco's discussion of why it believes the subject matter of the count and the claims of the parties which have been designated as corresponding to the count are unpatentable over certain alleged prior public use, as well as evidence of that alleged prior public use.

Also pending before the Board is Kalina's preliminary motion 1 (Paper No. 25) for judgment against Monaco's claims 62 and 63 on the ground of an on-sale bar under 35 U.S.C. § 102, and Kalina's miscellaneous motion 2 (Paper No. 26) to take testimony to support Kalina's preliminary motion 1.

Monaco's request for entry of adverse judgment is granted.

We decline to take up the issue of whether Kalina's claims are patentable over the public use alleged by party Monaco, in light of party Monaco's failure to file a

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preliminary motion for judgment and party Monaco's abandonment of the contest.

In light of the granting of Monaco's request for entry of adverse judgment, Kalina's preliminary motion 1 and miscellaneous motion 2 are moot and thus herein dismissed.

It is

**ORDERED** that judgment as to the subject matter of Count 1 is awarded against junior party JAY P. MONACO, JULIUS I. PERCHETS, and MARK P. SCOTT;

**FURTHER ORDERED** that junior party JAY P. MONACO, JULIUS I. PERCHETS, and MARK P. SCOTT are not entitled to a patent containing their claims 62 and 63 which correspond to the count;

**FURTHER ORDERED** that judgment as to the subject matter of the count is awarded in favor of senior party HARRY B. KALINA, CHARLES T. BOMGARDNER, and RICHARD N. HODGES; and

**FURTHER ORDERED** that the judge's copy of Paper No. 29 of this interference is placed in the file of senior party's involved Patent 5,642,823.

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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 )

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

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By Federal Express

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