

Trial Section Merits Panel  
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Paper No. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

ALAN B. BENNETT  
and ELLEN M. KLANN  
(5,658,773),

Junior Party,

v.

LEONA C. FITZMAURICE,  
THEODORE E. MIRKOV, KATHRYN J. ELLIOTT, WILLIAM O. BUTLER,  
YOSHIHIRO KONNO, and CRAIG D. DICKINSON  
(08/732,897),

Senior Party.

Interference No. 104,370

Before SCHAFER, LEE, and TORCZON, Administrative Patent Judges.

TORCZON, Administrative Patent Judge.

**JUDGMENT**

(PURSUANT TO 37 CFR § 1.662(a))

INTRODUCTION

Senior party Fitzmaurice has filed a request for adverse judgment "on the grounds that it is believed that the subject matter of the count is unpatentable" (Paper No. 34 at 2). The

request provides no reason for believing the subject matter of the count is unpatentable. Fitzmaurice has not advanced a theory in a motion or an opposition for believing that any of junior party Bennett's claims are unpatentable. Consequently, we enter judgment against Fitzmaurice based on its request, but without further action regarding the patentability of Bennett's claims.

ORDER

Upon consideration of the record of this interference, it is-

ORDERED that judgment on priority as to the Count is awarded against Fitzmaurice;

FURTHER ORDERED that Fitzmaurice is not entitled to a patent containing 08/732,897 application claims 39-45 and 47-50, which correspond to the Count;

FURTHER ORDERED that, based on the record before us, Bennett is entitled to a patent containing 5,658,773 patent claims 1-9, which correspond to the Count;

FURTHER ORDERED that a copy of this decision be given a paper number and be entered in the administrative record of the 5,658,773 patent and the 08/732,897 application.

RICHARD E. SCHAFER  
Administrative Patent Judge

JAMESON LEE  
Administrative Patent Judge

RICHARD TORCZON  
Administrative Patent Judge

BOARD OF  
PATENT  
APPEALS AND  
INTERFERENCES

Interference No. 104,370  
Bennett v. Fitzmaurice

Paper No. 35  
Page 4

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