

**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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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 13

Filed by: Trial Section  
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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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DAVID P. WILSON, EARL A. E. LUND (deceased),  
SABATINO R. ORFEO and JOSEPH M GARMAN,

Junior Party,  
(Application 08/723,964),

v.

PHILIP L. BARTLETT, DONALD B. BIVENS,  
BROOKS S. LUNGER and AKIMICHI YOKOZEKI,

Senior Party  
(Patent 5,182,040).

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Patent Interference No. 104,457

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

PER CURIAM.

**JUDGMENT PURSUANT TO 37 CFR § 1.617**

Upon consideration of the RESPONSE OF PARTY WILSON TO ORDER TO SHOW CAUSE (Paper 12), it is

ORDERED that judgment on priority as to Count 1, the sole count in the interference, is awarded against junior party David P. Wilson, Earl A. E. Lund (deceased), Sabatino R. Orfeo and Joseph M. Garman.

FURTHER ORDERED that judgment on priority as to Count 1 is awarded in favor of senior party Philip L. Bartlett, Donald B. Bivens, Brooks S. Lunger and Akimichi Yokozeki.

FURTHER ORDERED that, on the record before the Board of Patent Appeals and Interferences, senior party Philip L. Bartlett, Donald B. Bivens, Brooks S. Lunger and Akimichi Yokozeki is entitled to a patent containing claims 1-3 and 9 (corresponding to Count 1) of U.S. Patent 5,182,040, granted 26 January 1993, based on application 07/676,637, filed 28 March 1991.

FURTHER ORDERED that junior party David P. Wilson, Earl A. E. Lund (deceased), Sabatino R. Orfeo and Joseph M. Garman is not entitled to a patent containing claims 48 and 50-51 (corresponding to Count 1) of application 08/723,964, filed 26 September 1996.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

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FRED E. McKELVEY, Senior	)	
Administrative Patent Judge	)	
	)	
	)	
_____	)	
RICHARD E. SCHAFER	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
_____	)	
JAMESON LEE	)	
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