

By: Merits Panel
Interference Trial Section
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Filed: May 19, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Administrative Patent Judge James T. Moore)

STEPHEN P. TURNER

Junior Party,
(Patent 6,331,233)

v.

CHRISTOPHER A. MICHALUK
LOUIS E. HUBER
MARK N. KAWCHAK
and
JAMES D. MAGUIRE, JR.

Senior Party
(Application 09/922,815)

Patent Interference No. 105,158 (JTM)

JUDGMENT -- RULE 640

Before McKELVEY, Senior Administrative Patent Judge, and TORCZON and MOORE,
Administrative Patent Judges.

MOORE, Administrative Patent Judge.

A. Conference Call

A telephone conference call was held on May 18, 2004 at approximately 1:00 p.m., involving:

1. James T. Moore, Administrative Patent Judge
2. John Kilyk Jr. Esq., counsel for Michaluk
3. Daniel S. Glueck, Esq., counsel for Turner

The principal purpose of the conference call was to discuss Turner's lack of filed preliminary motions or a preliminary statement at the end of time period 1.

Turner stated that the filing of no preliminary motions or preliminary statement was intentional.

Michaluk requested that the APJ issue an order to show cause why judgment should not be entered against Turner.

B. Discussion

37 CFR § 1.601 provides that the interference rules shall be construed to "secure the just, speedy, and inexpensive determination of every interference." 37 CFR § 1.629(c)(1) provides that a party who does not file a preliminary statement shall be restricted to the party's effective filing date.

Turner is the junior party, accorded benefit of its application filing date of February 2, 2000 (Paper 1, page 3).

Michaluk is the senior party, accorded benefit of Application 09/199,569, filed

November 25, 1998. (Paper 1, page 4).

Consequently, Turner cannot prevail in this interference and it shall be terminated expeditiously.

Michaluk has also filed a preliminary statement (Paper 27), and four preliminary motions (Papers 22, 23, 24 and 25).

C. Judgment

It is hereby:

ORDERED that judgment on priority as to Count 1 (Paper 1, page 5), the only count in the interference, is awarded against junior party STEPHEN P. TURNER.

FURTHER ORDERED that junior party STEPHEN P. TURNER is not entitled to a patent containing claims 1-6 (corresponding to Count 1) of Patent 6,331,233.

FURTHER ORDERED that a copy of this paper shall be made of record in files of Patent 6,331,233 and application 09/922,815.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c), 37 CFR §§ 1.661 and 1.666.

FURTHER ORDERED that Michaluk's Preliminary Motions 1-4 are dismissed as moot.

FURTHER ORDERED that Michaluk's sealed, unopened preliminary statement be returned to Michaluk with the hard copy of this order (37 CFR § 1.631(c)).

_____)	
FRED E. McKELVEY)	
Senior Administrative Patent Judge)	
)	
)	
_____)	BOARD OF PATENT
RICHARD TORCZON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
_____)	
JAMES T. MOORE)	
Administrative Patent Judge)	

May 19, 2004
Arlington, VA

Interference 105,158 (JTM)

**May 19, 2004
Paper 28**

cc (via fax and US mail):

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