

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION AND  
IS NOT BINDING PRECEDENT OF THE BOARD

Paper No. 54

Filed by: Trial Section Merits Panel  
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30 April 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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JOHN L. SERNYK and JUAN E. ROMERO LANUZA  
Junior Party  
(Patent 5,965,755),

v.

LORIN R. DEBONTE  
Senior Party  
(Application 10/034,698).

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Patent Interference No. 105,163

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Before: SCHAFER, TORCZON and POTEATE, Administrative Patent Judges.  
POTEATE, Administrative Patent Judge.

**JUDGMENT—RULE 662**

**Part A. Conference call**

A telephone conference call was held in this interference on April 24, 2004, at approximately 10:00 a.m. (EST), including:

1. Linda R. Poteate, Administrative Patent Judge;
2. Oliver R. Ashe, Jr., Esq., counsel for Sernyk; and
3. Eugene C. Rzucidlo, Esq., counsel for DeBonte.

**Part B. Relevant discussion during conference call**

The conference call was initiated by counsel for DeBonte for the purpose of discussing DeBonte's Request for Entry of Judgment against DeBonte. Adverse judgment is requested on the basis that DeBonte's involved claims (claims 20-72) are not patentable to DeBonte under 35 U.S.C. § 135(b) (Paper 52). DeBonte's request for entry of adverse judgment is an abandonment of the contest as to the counts. 37 CFR 1.662(a). It is appropriate, therefore, to enter adverse judgment against DeBonte.

During the conference call, the Order relating to Sernyk's requests for discovery/testimony (Paper 41) was discussed and it was noted that DeBonte's/Cargill's answers to Sernyk's discovery requests are due on April 30, 2004 and that the deposition of Willie H.T. Loh is scheduled to take place next month. Sernyk asks that entry of adverse judgment be deferred until after discovery is complete. In light of DeBonte's abandonment of the contest, we see no reason to continue discovery into matters related to the issues raised in this interference.

**Part C. Order**

Upon consideration of DeBonte's Request for Entry of Judgment and Sernyk's Response thereto (Paper 53) and in view of the above, it is hereby:

**ORDERED** that senior party Lorin R. DeBonte is not entitled to a patent containing claims 20-72 of Application 10/034,698.

**FURTHER ORDERED** that the Order directing DeBonte and Cargill to respond to Sernyk's discovery requests and authorizing Sernyk to take the testimony of Willie H.T. Loh (Paper 41), is vacated.

**FURTHER ORDERED** that a copy of this paper and Paper 51 shall be made of record in the files of application 10/034,698 and U.S. Patent 5,965,755.

**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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RICHARD E. SCHAFER )	
Administrative Patent Judge )	
_____ )	BOARD OF PATENT
RICHARD TORCZON )	APPEALS AND
Administrative Patent Judge )	INTERFERENCES
_____ )	INTERFERENCE
LINDA R. POTEATE )	TRIAL SECTION
Administrative Patent Judge )	

cc (via Facsimile and Federal Express):

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