

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 42

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN J. GERTNER, JR.

Appeal No. 2001-2183
Application 08/621,215¹

HEARD: January 16, 2003

Before BARRETT, DIXON, and BLANKENSHIP, Administrative Patent Judges.

BARRETT, Administrative Patent Judge.

DECISION ON REQUEST FOR REHEARING

Appellant filed a "REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.197" (Paper No. 40) on April 9, 2003, requesting that we designate our affirmances of rejections based on Mae in

¹ Application for patent filed March 25, 1996, entitled "Angled Port Loudspeaker," which is a file-wrapper-continuation of Application 08/422,779, filed April 17, 1995, now abandoned, which is a file-wrapper-continuation of Application 08/063,136, filed May 17, 1993, now abandoned.

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our decision (Paper No. 39) entered February 11, 2003, as new grounds of rejection under 37 CFR § 1.196(b). Appellant also simultaneously filed an amendment (Paper No. 41), amending independent claims 1 and 16, with the request for rehearing.

Appellant argues that the Board adopted an interpretation of the "enclosure" in Mae in the affirmance of prior art rejections based on Mae either alone or in combination with Veranth or Sakai, which was radically different from the interpretation relied upon by the examiner. It is argued that appellant has not had a fair opportunity to respond to this new interpretation.

After due consideration, we agree that our interpretation of Mae is so different from the interpretation advanced by the examiner that it amounts to a new ground of rejection. Accordingly, we grant appellant's request for rehearing and designate the affirmed rejections based on Mae in our original decision as new grounds of rejection pursuant to 37 CFR § 1.196(b). Appellant's amendment (Paper No. 41) is a response under § 1.196(b)(1), which amendment must be entered and considered by the examiner to determine whether it overcomes the new grounds of rejection. Pursuant to the procedure in § 1.196(b)(1), the application is remanded to the examiner for consideration of the amendment.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

GRANTED AND REMANDED

LEE E. BARRETT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOSEPH L. DIXON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
HOWARD B. BLANKENSHIP)	
Administrative Patent Judge)	

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