

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID A. BERNARD

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Appeal No. 2001-1473  
Application 08/946,736

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ORDER REMANDING TO EXAMINER

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An examination of the file reveals that an Information Disclosure Statement (IDS) was filed November 7, 1997 (Paper No. 5). It is not apparent from the record whether the examiner considered the statement submitted or notified appellant of why his submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98. A communication notifying appellant of the Primary Examiner's decision is required.

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In addition, according to page 3 of the Examiner's Answer mailed July 17, 2000 (Paper No. 19), "[t]he copy of the appealed claims contained in the Appendix to the brief is correct." However, it is noted that the language of claim 28 in the Appendix differs from its last amended version.

Finally, while the discussion relating to the claim rejection under 35 U.S.C. § 103 appearing on the bottom of page 3 and the first half of page 4 of the Examiner's Answer mailed July 17, 2000 (Paper No. 19) appears to be a duplicate of page 2 of the Final Rejection mailed February 2, 1999 (Paper No. 9), it is noted that the following text appears to be missing from the Examiner's Answer: Claims 15-16 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Christian et al. '546. Clarification is required.

Accordingly, it is

ORDERED that the application is remanded to the Examiner:

1. for consideration of the IDS filed November 7, 1997 and appropriate notification to appellant;
2. for notification to appellant to submit a new Appendix to the Appeal Brief which contains the corrected claim,

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or for issuance of a supplemental Examiner's Answer which contains a correct copy of claim 28;

3. for clarification regarding the possible missing text in the Examiner's Answer relating to the 35 U.S.C. § 103 rejection of claims 15-16 and 28 over Christian et al. '546; and

4. for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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