

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 55

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAIN CHANG

Appeal No. 2002-0972
Application No. 08/816,466

ORDER REMANDING TO EXAMINER

Appellant filed a Reply Brief on January 8, 2002 (Paper No. 53) in response to the Examiner's Answer entered on October 22, 2001 (Paper No. 52). The examiner responded to appellant's Reply Brief in a communication mailed on January 23, 2002 (Paper No. 54). According the Manual of Patent Examining Procedure (MPEP) § 1208.03 (Aug. 2001):

Under 37 CFR 1.193(b)(1), appellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer or supplemental examiner's answer. . . . The primary examiner must then either: (A) acknowledge receipt and entry of the reply brief by using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP § 1208.02. A supplemental examiner's answer is not permitted unless the application has been remanded by the Board for such purpose. [Emphasis added.].

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The examiner's response to appellant's Reply Brief mailed on January 23, 2002 (Paper No. 54) is a Supplemental Examiner's Answer which is not in accordance with MPEP § 1208.03.

Accordingly, it is

ORDERED that the application is remanded to the examiner for proper response to Reply Brief, or to reopen prosecution, and 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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