

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

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK PENLERICK *et al.*

Appeal No. 2003-0881
Application 09/658,561

ORDER REMANDING TO EXAMINER

On March 3, 2003, Appellants filed a Reply Brief including a new Appendix A (Paper No. 18) together with an extension of time (Paper No. 17) under 37 CFR § 1.136(a). A separate determination as to whether the Reply Brief and Appendix A should be entered must be made, and if the Reply Brief is so entered, then the Reply Brief would need to be considered by the examiner with respect to compliance with the criteria set forth in 37 CFR § 1.193(b)(1) which states:

Applicant may file a reply brief to an examiner's answer or a supplemental examiner's answer within two months from the date of such examiner's answer or supplemental examiner's answer. See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550(c) for extensions of time for filing a

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reply brief in a reexamination proceeding. The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief.

Currently, it appears that the Reply Brief is not in compliance with 37 CFR § 1.193(b)(1) since appellants belatedly filed the Reply Brief approximately one month after the expiration of the two month period that runs from the date of the examiner's answer (i.e., December 3, 2002), and that an extension of time under 37 § 1.136(a) is not available for filing a reply brief,

Accordingly, it is

ORDERED that the application be remanded to the examiner for appropriate determination of entry and/or consideration of the Reply Brief, a determination of whether the Appendix A would be permitted entry, and for such further action as may be appropriate.

This application, by virtue of its "special" status, requires an immediate action, see MPEP 708.01 (Eight Edition, Rev. 1, Feb. 2003), item (D). It is important that the Board of Patent Appeals and Interferences be promptly informed of any action affecting the appeal in this case.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____
CRAIG R. FEINBERG
Program and Resource Administrator

Donald R. Schoonover, Esq.
4211 Rolling Hills Drive
Nixa, Missouri 65714

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