

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No.

19

Filed by: Trial Section Merits Panel
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
Fax: 703-305-0942

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

RAJENDRA PATEL,

Junior Party
(Patent No. 5,315,636),

v.

ROBERT M. FULLER, FREDERICK A. EPLER,
and MAXWELL E. MANOWSKI

Senior Party
(application 08/447,751).

Patent Interference No. 104,166

Before McKelvey, Senior Administrative Patent Judge, Schafer
and Lee, Administrative Patent Judges.

PER CURIUM.

Final Decision and Judgment

A. Introduction

Interference No. 104,166
Patel v. Fuller

The interference is before a merits panel for entry of a final decision and judgment.

B. Findings of Fact

1. This interference was declared on May 22, 1998, with a single count.

2. Senior party Fuller filed preliminary motion 1 to add proposed count 2, contingent preliminary motion 2 to add proposed count 3 in case preliminary motion 1 is not granted, and contingent preliminary motion 3 to add proposed count 4 in case preliminary motions 1 and 2 are not granted.

3. Junior party Patel filed no preliminary motions.

4. Junior party Patel filed no preliminary statement.

5. Junior party Patel did not oppose any one of senior party Fuller's preliminary motions 1, 2, and 3.

6. On September 1, 1998, administrative patent judge Murriel Crawford issued an order for junior party Patel to show cause why judgment should not be granted against the junior party with respect to the subject matter of count 1, setting a response period of 20 days.

7. Junior party Patel has not responded to the show cause order.

8. Within the 20 day period for the junior party to respond to the order to show cause, senior party Fuller filed a miscellaneous motion pointing out that the show cause order did not address the matter of the senior party's pending motions to add a new count, and requesting that the interference be re-declared with count 2, 3, or 4, as proposed in the senior party's preliminary motions.

9. Junior party Patel did not respond to senior party Fuller's miscellaneous motion.

10. Senior party Fuller's preliminary motions 1, 2, and 3, and miscellaneous motion stand unopposed.

11. To this date, junior party Patel has not filed any paper, with the possible exception of a paper filed by its counsel to seek withdrawal as attorneys. See Paper No. 5.

12. The request by junior party's counsel to withdraw was granted by administrative patent judge Murriel Crawford.

C. Discussion

Party Fuller's preliminary motion 1 to add proposed count 2 is unopposed. The motion is granted-in-part. No reason has been shown by party Fuller to have count 2 deviate from the language of Patel's claim 1 or Fuller's claim 80.

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Accordingly, count 2 will be added, but it will read as follows:

Party Patel's claim 1 or party Fuller's claim 80.

This interference is concurrently re-declared in a separate paper to include count 2.

Party Fuller's contingent preliminary motions 2 and 3 are dismissed, because preliminary motion 1 has been granted. Party Fuller's miscellaneous motion to re-declare the interference is dismissed, because the interference is being re-declared to include count 2 because of the granting of preliminary motion 1. Because party Patel did not respond to the show cause order of September 1, 1998, entry of adverse judgment against party Patel as to the subject matter of count 1, under 37 CFR § 1.640(e), is appropriate.

As to the subject matter of count 2, entry of adverse judgment against junior party Patel is also deemed appropriate at this time, in light of the indication from party Patel's counsel, prior to their withdrawal from representation in this case, that "Mr. Patel advised Philip G. Meyers, an attorney at Gardere & Wynne, that he did not wish to maintain the patent or continue this interference," and in light of party Patel's

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total failure to prosecute this interference. See Paper No.
5.

Accordingly, it is

ORDERED that judgment as to the subject matter of count 1
is awarded to senior party Fuller and entered against junior
party Patel;

FURTHER ORDERED that judgment as to the subject matter of
count 2 is awarded to senior party Fuller and entered against
junior party Patel;

FURTHER ORDERED that Rajendra Patel is not entitled to
claims 11, 13, 14, 18, 19, and 25 of U.S. Patent No.
5,315,636, which correspond to count 1;

FURTHER ORDERED that Rajendra Patel is not entitled to
claims 1-10, 12, 15, and 20-24 of U.S. Patent No. 5,315,636,
which correspond to count 2;

FURTHER ORDERED that on this record, Robert M. Fuller,
Frederick A. Epler, and Maxwell E. Manowski, are entitled to
claims 90, 92, 93, 95, 96, 102, and 103 of their application
08/447,751, which correspond to count 1;

FURTHER ORDERED that on this record, Robert M. Fuller,
Frederick A. Epler, and Maxwell E. Manowski are entitled to

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claims 80-89, 91, 94, 97-101 and 104 of their application
08/447,751, which correspond to count 2.

Fred E. McKelvey, Senior)
Administrative Patent Judge)
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Richard E. Schafer)
Administrative Patent Judge)
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Jameson Lee)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Via Federal Express

Party Patel (pro se)

Rajendra Patel
8817 Belmart Road
Potomac, Maryland 20854-1612

Attorney for party Fuller:

Alan K. Roberts
Ladas & Parry
26 West 61st Street
New York, New York 10023