

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 44

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STAN W. THOMAS, ROGER D. KEY, KYLE G. FLUEGEL,
WILLIE K. JACKSON, KEITH D. ELWELL
AND GARY L. WHITE

Appeal No. 1996-1955
Application No. 08/392,416

ON BRIEF

Before PAK, WARREN, and KRATZ, Administrative Patent Judges.
PAK, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants request rehearing of our decision mailed September 20, 2000, wherein we affirmed the examiner's decision rejecting the claims on appeal under the doctrine of obviousness-type double patenting as unpatentable over claims

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1 through 10 of U.S. Patent 5,296,335 issued to Thomas et al.
on March 22, 1994.

According to appellants (Request for Rehearing, page 2),
"the Board overlooked an important point in the Board's
decision because the [e]xaminer had already withdrawn the
[obviousness-type double patenting] rejection that the Board
affirmed." In support of their position, appellants refer to
the examiner's response dated June 5, 1996, Paper No. 26.

Although neither appellants' Briefs nor the examiner's
original Answer indicates that the obviousness-type double
patenting rejection in question was withdrawn, the examiner
did withdraw it as evidenced by the examiner's Office action
dated June 5, 1996. In that action, the examiner stated that:

The Terminal Disclaimer is accepted and made of a
record. Accordingly, the double patenting of the
record has been withdrawn....

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In view of the foregoing, we grant appellants' request.
Our affirmance of the obviousness-type double patenting
rejection in the decision dated September 20, 2000 is
withdrawn.

GRANTED

CHUNG K. PAK)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
CHARLES F. WARREN)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
PETER F. KRATZ)	
Administrative Patent Judge)	

CKP:lp

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HAROLD E. MEIER, ESQ.
BAKER AND BOTTS, L.L.P.
2001 ROSS AVENUE
DALLAS, TEXAS 75201

Leticia

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APJ PAK

APJ KRATZ

APJ WARREN

DECISION: GRANTED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s):
Prepared: August 14, 2001

Draft Final

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OB/HD GAU

PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT