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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 183

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ALBERT K. CHIN and
JOHN P. LUNSFORD,

Junior Party,[1]

v.

MACIEJ J. KIETURAKIS,
KENNETH H. MOLLENAUER, and
MICHELLE Y. MONTFORT,

Senior Party.[2]

Patent Interference No. 103,343

DECISION ON RECONSIDERATION; JUDGMENT UNDER 37 CFR § 1.690

STONER, Chief Administrative Patent Judge, and MARTIN and HANLON, Administrative Patent Judges.

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[1] Application 07/911,714, filed July 10, 1992. Assigned to Origin Medsystems, Inc. Accorded benefit of: None.

[2] Application 07/893,988, filed June 2, 1992. Assigned to General Surgical Innovations, Inc. (GSI). Accorded benefit of: None.

Because, as required by 37 CFR § 1.690(c), the Arbitrator's November 10, 1998, "AWARD OF PRIORITY" is binding on the parties, is in writing, and states in a clear and definite manner the issue to be decided (i.e., priority) and the disposition of that issue, judgment on the issue of priority is being entered in accordance with that award. The Arbitrator determined that Chin et al. failed to prove a date of invention prior to Kieturakis's June 2, 1992, filing date, and also that Kieturakis achieved an actual reduction to practice on September 30, 1991. The determination that Kieturakis reduced to practice on September 30, 1991, renders moot Chin et al.'s request for reconsideration filed October 19, 1998, which seeks review of our decision mailed September 17, 1998, to the extent we denied Chin et al.'s 37 CFR § 1.633(f) motion for benefit of the November 19, 1991, filing date of Moll et al. application Serial No. 07/794,590 (Patent No. 5,309,896). Chin et al.'s request for reconsideration is therefore dismissed as moot.

In accordance with the arbitration award, judgment on the issue of priority is hereby entered against Chin et

al.'s claims that correspond to the count (i.e., claims 34-66), which means Chin et al. are not entitled to a patent including those claims. Therefore, judgment on the issue of priority is awarded in favor of Kieturakis's claims that correspond to the count (i.e., claims 73, 74, and 76-80). This award of priority, coupled with the denial of Chin et al.'s 37 CFR § 1.633(a) motion in our decision mailed September 17, 1998, means Kieturakis is entitled to a patent including those claims.

_____	)
BRUCE H. STONER, JR., Chief Administrative Patent Judge	)
_____	)
JOHN C. MARTIN Administrative Patent Judge	)
_____	)
ADRIENE LEPIANE HANLON Administrative Patent Judge	)

BOARD OF PATENT APPEALS AND INTERFERENCES

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