

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ALLEN PUTNAM

Junior Party
(Patent No. 29/080,615)¹

v.

MARK F. KNUDSEN

Senior Party
(Application 29/078,357)²

Patent Interference No. 104,383

Before McKELVEY, Senior Administrative Patent Judge, LEE and SCHAFFER, Administrative Patent Judges.

LEE, Administrative Patent Judge.

JUDGMENT

Junior party Putnam has filed a paper (Paper No. 12) in

¹ Filed December 11, 1997.

² Filed October 7, 1997. The real party in interest is K. P. Outfitters, Inc.

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which it is stated: "Junior Party Allen Putnam hereby abandons the invention which is the subject matter of the Count in the foregoing interference [104,383]." The paper is treated as a request for entry of adverse judgment under 37 CFR § 1.662(a).

In the same paper, the junior party provided certain information relating to an alleged on-sale bar under 35 U.S.C. § 102(b), and requested that the Board render a ruling that the claims of neither the junior party nor the senior party are patentable over the alleged on-sale activity. The request is not accompanied by any substantive analysis directed to the features of the involved claims and thus cannot reasonably be regarded as a motion for judgment under 37 CFR § 1.633(a). If it were a motion for judgment filed under 37 CFR § 1.633(a), it would have been summarily denied as to Knudsen's claims even without need of any opposition from senior party Knudsen. Thus, we regard the request as mere invitation for the Board to analyze the supplied information and determine, on the Board's own initiative, whether the claims are patentable. In our view, such examination is better left to be performed by an examiner, in the first instance.

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On the afternoon of March 30, 2000, a telephone conference was conducted between the administrative patent judge and respective counsel for the junior and senior party. In the telephone conference, Mr. Allen Putnam representing the junior party indicated that the junior party's abandonment of the invention is not conditioned upon any ruling by the Board as to the patentability of either party's claims over the supplied information.

The junior party's request for entry of adverse judgment against the junior party is **granted**.

Because the junior party has abandoned its invention corresponding to the Count and because the junior party has not and does not intend to file a motion for judgment under 37 CFR § 1.633(a) against the senior party's claims, the request for a ruling of unpatentability against both parties' claims over prior art is **denied**. It is

ORDERED that judgment as to the subject matter of the Count is herein awarded in favor of senior party MARK F. KNUDSEN;

FURTHER ORDERED that judgment as to the subject matter of the Count is awarded against junior party ALLEN PUTNAM;

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FURTHER ORDERED that, on this record, senior party MARK F. KNUDSEN may be entitled to a patent containing its sole design claim which corresponds to the Count, subject to the examiner's evaluation of the information supplied by junior party Putnam;

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By Federal Express

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