The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 280

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Filed
20 September 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

ROBERT C. **ROSE**,
WILLIAM BONNEZ
and RICHARD C. REICHMAN,

Junior Party,
(Application 08/207,309)

v.

IAN **FRAZER**
and JIAN ZHOU,

Senior Party.
(Application 08/185,928)

Patent Interference 104,773 (NAGUMO)

Before: McKELVEY, Senior Administrative Patent Judge, LANE, TIERNEY, MOORE, and NAGUMO, Administrative Patent Judges.

PER CURIAM.

Judgment — Merits — Bd.R. 127

I. Introduction

1. The sole count in this interference is Count 1.

2. Rose has been accorded the benefit for priority of the filing date of application 08/028,517, which is 9 March 1993 (Rose's date of constructive reduction to practice).

3. Frazer has been accorded the benefit for priority of the filing date of its PCT application PCT/AU92/00364 (FX 1028), which is 20 July 1992 (Frazer's date of constructive reduction to practice).

4. For the reasons given in the opinion for the Board authored by Administrative Patent Judge Lane (Paper 195, Decision – Rose Priority Date – Bd.R. 125(a)), which is mailed the same date as this judgment, we held that Rose failed to prove that it conceived or actually reduced to practice an embodiment within the scope of Count 1 prior to Frazer's date of constructive reduction to practice.

5. Moreover, we found that Rose failed to prove reasonable diligence from any alleged date of conception until a reduction to practice.

6. Thus, Rose has failed to overcome the presumption that Frazer, as the senior party, is the first inventor.

7. Priority is awarded as to Count 1 **against** Rose.

8. The net effect of the judgments in interferences 104,771 through 104,776 on each of the involved parties is summarized in Appendix 1, which is attached to this judgment.

IV. Order

For the reasons given above, it is

ORDERED that priority is awarded **against** Robert C. Rose, William Bonnez, and Richard C. Reichman as to Count 1, the sole count in this interference;

FURTHER ORDERED that Robert C. Rose, William Bonnez, and Richard C. Reichman are not entitled to a patent to claims 35-37, 41-45, 48, 50, 52-57, 59, 61-65, 67-72, 75-77, 79-89, and 91, which are all the claims of application 08/207,309.

FURTHER ORDERED that the prior decisions in this interference are merged with this judgment.

FURTHER ORDERED that a copy of Paper 195, Decision – Rose Priority Date – Bd. R. 125(a), shall be entered in the files of application 08/207,309 and application 08/185,928.

FURTHER ORDERED that a copy of Paper 278, Decision – Frazer Priority Date – Bd. R. 125(a), shall be entered in the files of application 08/207,309 and application 08/185,928.

FURTHER ORDERED that a copy of this Judgment shall be entered in the files of application 08/207,309 and application 08/185,928.

FURTHER ORDERED that if there is a settlement, the attentions of the parties are directed to 35 U.S.C. § 135(c) and 37 CFR § 41.205.

FURTHER ORDERED that, if an appeal under 35 U.S.C. § 141, or a civil action under 35 U.S.C. § 146 is taken by any party in this interference, that party shall file a copy of the notice of the appeal with the Board in this interference.

/ss/ Fred E. McKelvey)
FRED E. McKELVEY, Senior)
Administrative Patent Judge)
)
)
/ss/ Sally Gardner Lane)
SALLY GARDNER LANE)
Administrative Patent Judge)BOARD OF PATENT
) APPEALS AND
) INTERFERENCES
/ss/ Michael P. Tierney)
MICHAEL P. TIERNEY)
Administrative Patent Judge)
)
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APPENDIX 1

Introduction

This appendix summarizes the net effect of the judgments in interferences 104,771 through 104,776 on each of the parties. This appendix is an executive summary only: the judgments and orders in each interference should be consulted for the legally binding determinations of the Board.

Interferences 104,771 through 104,776 are the six two-party interferences that were declared coincident with the administrative termination of the four-party interference 103,929.

Each party in each of the new interferences was authorized to serve each party in the original interference with copies of any papers filed in any of the new two-party interferences. Each two-party interference, however, was a proceeding complete unto itself, and was decided on the basis of the motions and arguments raised and evidence presented in that interference. Thus, a motion for judgment raised by party A against party B in interference 1 might be granted if A carried its burden of proof, while a motion for the same judgment, raised by party C against party B in interference 2, might be denied if C failed to carry its burden of proof. Similarly, if party D did not raise the motion for judgment against party B in interference 3, D would

not be advantaged and B would not be disadvantaged in interference 3 by the decision in interference 1.

Upon issuance of judgments in all the interferences, however, each party is subject to the logical union, in the Boolean-algebraic sense, of all the judgments. Simply put, a judgment in any interference that claim X is unpatentable to party A precludes that party from obtaining a patent to that claim.

Judgments in the Interferences

104,771: Rose v. Lowy

Adverse judgment as to priority was entered against junior party Rose.

Accordingly, Robert C. Rose, William Bonnez, and Richard C. Reichman are not entitled to a patent to claims 35-37, 41-45, 48, 50, 52-57, 59, 61-65, 67-72, 75-77, 79-89 and 91 of application 08/207,309.

104,772: Rose v. Schlegel

Adverse judgment as to priority was entered against junior party Rose.

Accordingly, Robert C. Rose, William Bonnez, and Richard C. Reichman are not entitled to a patent to claims 35-37, 41-45, 48, 50, 52-57, 59, 61-65, 67-72, 75-77, 79-89 and 91 of application 08/207,309.

104,773: Rose v. Frazer

Adverse judgment as to priority was entered against junior party Rose.

Accordingly, Robert C. Rose, William Bonnez, and Richard C. Reichman are not entitled to a patent to claims 35-37, 41-45, 48, 50, 52-57, 59, 61-65, 67-72, 75-77, 79-89 and 91 of application 08/207,309.

104,774: Lowy v. Schlegel

Adverse judgment as to priority was entered against junior party Lowy.

Accordingly, Douglas R. Lowy, John T. Schiller, and Reinhard Kirnbauer are not entitled to a patent to claims 48 and 49 of application 08/484,181.

104,775: Lowy v. Frazer

Adverse judgment as to priority was entered against junior party Lowy.

As a result of this judgment and the Decision on Preliminary Motions, Douglas R. Lowy, John T. Schiller, and Reinhard Kirnbauer are not entitled to a patent to claims 34-49 of application 08/484,181.

As a result of the Decision on Preliminary Motions, modified by the Decision on Reconsideration (Paper 229), Ian Frazer and Jian Zhou are not entitled to a patent to claims 91, 92, 95, and 96 of application 08/185,928.

104,776: Frazer v. Schlegel

Adverse judgment as to priority was entered against junior party Frazer.

As a result of this judgment and the Decision on Preliminary Motions, Ian Frazer and Jian Zhou are not entitled to a patent to claims 65-80 and 89-100 of application 08/185,928.

As a result of the Decision on Preliminary Motions, C. Richard Schlegel and A. Bennett Jensen are not entitled to a patent to claims 1-3, 10, 12, 13, 18, 19, 21, 26, 46, 47, and 50-66 of application 08/216,506.

Summary

As a result of decisions in this interference:

Robert C. Rose, William Bonnez, and Richard C. Reichman are not entitled to a patent to claims 35-37, 41-45, 48, 50, 52-57, 59, 61-65, 67-72, 75-77, 79-89, and 91 of application 08/207,309;

Douglas R. Lowy, John T. Schiller, and Reinhard Kirnbauer are not entitled to a patent to claims 34-49 of application 08/484,181;

Ian Frazer and Jian Zhou are not entitled to a patent to claims 65-80 and 89-100 of application 08/185,928;

C. Richard Schlegel and A. Bennett Jensen are not entitled to a patent to claims 1-3, 10, 12, 13, 18, 19, 21, 26, 46, 47, and 50-66 of application 08/216,506.

Thus, Schlegel may, subject to the determination of any civil actions or appeals arising from the decisions in the interferences to which it is a party, continue to seek a patent to claims 14, 16, and 23-25 of application 08/216,506.