

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY W. FINI JR.

Appeal No. 1999-0451
Application No. 08/555,275¹

ON BRIEF

Before CALVERT, MEISTER, and ABRAMS, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

ON REHEARING

¹ Application for patent filed November 8, 1995. According to appellant, this application is a continuation-in-part of Application No. 08/099,130, filed July 29, 1993, now abandoned.

Appellant has filed a request under 37 CFR 1.197(b) for reconsideration² of our decision of July 29, 1999 (Paper No. 20), wherein we affirmed the rejection of claims 1 to 7, 9, 10, 13 and 15 to 23 for lack of compliance with the written description requirement of 35 U.S.C. § 112, first paragraph.

The request is accompanied by an affidavit of the appellant concerning his intention as to the meaning of certain language in the application as filed. This affidavit will be considered only as argument, not as evidence. See MPEP § 1211.02 (July 1998), penultimate paragraph.

We note initially that in determining whether an application's disclosure complies with the written description requirement of § 112, first paragraph, the question of what the applicant intended to disclose is immaterial, since as stated on page 3 of our decision, the test for compliance concerns what is conveyed to those skilled in the art.

As discussed in our decision, the only occurrence of the word "scheduled" in appellant's disclosure as filed was on page

² Requests for reconsideration under 37 CFR 1.197(b) are now designated requests for rehearing, per the amendment effective December 1, 1997 (62 F.R. 53131 (Oct. 10, 1997), 1203 O.G. 63(Oct. 21, 1997)). See MPEP § 1214.03 (July 1998).

7, line 23 of the specification, and in original claim 1, line 12, and claim 7, line 2. We have fully considered the arguments in the request for reconsideration, but are still of the view that, taking into consideration the lack of disclosure of a timetable, how a timetable would be determined, etc., the application as filed would not convey with reasonable clarity to those skilled in the art that appellant was in possession of "the application of braking force... in regular steps or degrees in a timetable," which is what appellant asserted on page 10 of his brief was being claimed.

Accordingly, the request for reconsideration (rehearing) is denied insofar as it seeks any reversal or modification of Paper No. 20.

DENIED

IAN A. CALVERT)
Administrative Patent Judge)
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) BOARD OF PATENT
JAMES M. MEISTER) APPEALS

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NEAL E. ABRAMS)
Administrative Patent Judge)

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