

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION
and is not binding precedent of the Board**

Paper 28

Filed by: Richard E. Schafer
Administrative Patent Judge
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

DOUGLAS A. KESZLER
Junior Party
(Patent 5,684,813),

v.

TAKATOMO SASAKI, AKIO HIRAKI,
YUSUKE MORI and SADA0 NAKAI,
Senior Party
(Application 08/503,083).

Patent Interference No. 104,577

Before: McKELVEY, Senior Administrative Patent Judge, and SCHAFER and TORCZON,
Administrative Patent Judges.

SCHAFER, Administrative Patent Judge.

FINAL JUDGMENT

An Order entered November 22, 2000, required junior party Keszler to file its preliminary statement by December 1, 2000. Paper 27. Keszler did not file a preliminary statement. In a telephone

conversation with paralegal specialist Yolunda Townes on December 6, 2000, counsel for Keszler indicated that no preliminary statement would be filed..

Discussion

Section 1.629(c) of 37 CFR provides:

1.629 Effect of preliminary statement.

* * * * *

- (c) If a party does not file a preliminary statement, the party:
 - (1) Shall be restricted to the party's effective filing date and
 - (2) Will not be permitted to prove that:
 - (i) The party made the invention prior to the party's filing date or
 - (ii) Any opponent derived the invention from the party.

Since Keszler did not file a preliminary statement, Keszler is restricted to its filing date of October 26, 1995. 37 CFR § 1.629(c)(1). As this date is subsequent to Sasaki's effective filing date of July 17, 1995, Sasaki is presumptively the first to invent the subject matter of the count. 37 CFR § 1.657(a). Because it did not file a preliminary statement, Keszler is not permitted to prove that it made the invention prior to its filing date (37 CFR § 1.629(c)(2)(i)) or to present a case-in-chief (37 CFR § 1.651(c)(2)). Since Keszler is precluded from proving a date of invention earlier than Sasaki's filing date, under the particular facts of this case, the issuance of an order to show cause (37 CFR § 1.640(d)(2)) is unnecessary and entry of a final judgment at this time is appropriate.

Accordingly, it is

ORDERED that judgment on priority as to Counts 1 and 2, the only counts in this interference, is awarded against junior party DOUGLAS A. KESZLER;

FURTHER ORDERED that junior party DOUGLAS A. KESZLER is not entitled to a patent containing claims 1-18 (corresponding to Count 1) or claims 19-26 (corresponding to Count 2) of Patent 5,684,813, granted November 4, 1997, based on application 08/548,458, filed October 26, 1995;

FURTHER ORDERED that if there is a settlement agreement and it has not already been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661; and

FURTHER ORDERED that a copy of this decision be given appropriate paper numbers and entered into the file records of Patent 5,684,813 and Application 08/503,083.

_____)	
FRED E. McKELVEY)	
Senior Administrative Patent Judge)	
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_____)	BOARD OF PATENT
RICHARD E. SCHAFER)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
_____)	
RICHARD TORCZON)	
Administrative Patent Judge)	

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