

Appeal No. 2001-0382 being entered today was not written  
Application No. 08/861,481 and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DARYLE PAT DONNER, HAROLD WAYNE FRIESEN,  
DAVID R. HAWKINS & STEPHEN TAYLOR ZERBS

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Appeal No. 2001-0382  
Application 08/861,481

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ORDER REMANDING TO EXAMINER

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On July 9, 1998, Appellants have filed an Information Disclosure Statement (IDS) (Paper No. 4). There is no indication in the record that the examiner has considered the IDS statements. It is also noted that the examiner, in his Office Action mailed September 15, 1998 (Paper No. 15), indicated on the PTO-892 form that he considered the first reference cited on the IDS statement. However, there is no indication that the examiner considered the second reference. Appropriate correction is required.

In addition, Appellants filed a response to the Examiner's

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Answer on February 27, 2001 (Paper No. 21). It is noted for the Examiner and appellants, that this paper may not be in compliance with 37 CFR §1.193(b)(1), which states:

"Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer. See §1.136(b) for extensions of time for filing a reply brief in a patent application and §1.550(c) for extensions of time for filing a reply brief in a reexamination proceeding. The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose."

According to the file, the Examiner's Answer was entered on November 20, 2000. This gave appellants till January 20, 2001 to file a reply brief or an extension of time. Since January 20, 2001 fell on a Saturday, appellants had until January 22, 2001 to file a reply brief or an extension of time. Appellants filed their request on February 27, 2001, which is more than one month after the time appellants had to file a reply brief or an extension of time. Accordingly, it appears that the Reply Brief filed February 27, 2001 is untimely filed, and may be denied entry. Accordingly, the examiner needs to determine if the Reply Brief is timely filed, and notify appellants, in writing, of the result.

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Accordingly, it is

ORDERED that the application is remanded to the  
Examiner for:

- 1) consideration of the IDS filed July 9, 1998 (Paper No. 4);
- 2) notification, in writing, of said consideration;
- 3) to determine whether or not the Reply Brief filed February 27, 2001 (Paper No. 21) is timely filed;
- 4) if the Reply Brief is considered timely filed, then entry and consideration of the reply brief;
- 5) notification, in writing, of said consideration;
- 6) if the Reply brief is considered untimely, notification, in writing, of said consideration; and
- 7) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: \_\_\_\_\_  
Dale M. Shaw  
Program and Resource Administrator  
(703) 308-9797

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dms:DMS

cc: Docket Administrator  
Rm. 3C-512 Lucent Technologies Inc.  
600 Mountain Avenue  
P.O. Box 636  
Murray Hill, NJ 07974