

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHANNON HERRING

Appeal No. 2002-1288
Application No. 09/570,759

ORDER REMANDING TO EXAMINER

On page 3 of the Examiner's Answer mailed March 11, 2002 (Paper No. 12), the examiner listed the following references under the heading "(9) Prior Art of Record";

5986190 [sic, 5986193]	Garrison	11/1999
5497689	Hoshino	3/1996
5375497	Pirchio et al	12/1994

It is noted that the White reference cited on pages 3 and 4 of the Examiner's Answer under the heading "(10) Grounds of Rejection" is not included as "Prior Art of Record." In accordance with § 1211 of the Manual of Patent Examining

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Procedure (MPEP) (8th Ed., August 2001), clarification is required regarding the pertinence of the White reference.

In addition, MPEP § 1208(A)(9) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER.

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . .

(9) References of Record. A listing of the references of record relied on, and, in the case of nonpatent references, the relevant page or pages.

If appropriate, compliance with MPEP § 1208(A)(9) is required in listing the White reference under the heading "Prior Art of Record" appearing in the Examiner's Answer mailed March 11, 2002 (Paper No. 12).

In addition, on September 28, 2001, appellant filed a Notice of Appeal (Paper No. 9) and another paper entitled "Response" which contained an amendment (Paper No. 10). There is no indication in the record of whether or not the examiner has considered the Amendment. Further, the amendment has not been physically entered.

Accordingly, it is

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ORDERED that the application is remanded to the examiner:

1. for clarification under MPEP § 1211 regarding the pertinence of the White reference listed on pages 3 and 4 of the Examiner's Answer mailed March 11, 2002 (Paper No. 12);

2. if appropriate, for compliance with MPEP § 1208(A)(9) by listing the White reference in a Supplemental Examiner's Answer under the heading "References of Record";

3. for clarification of the entry status of the amendment filed September 28, 2001 (Paper No. 10):

a. If the amendment has been entered, appellant should be notified in writing regarding entry of the amendment;

b. If the amendment has not been entered, appellant's Appeal Brief filed January 10, 2001 (Paper No. 11) is defective because it does not contain an accurate statement regarding the "Status of Amendments" or a copy of claim 13. See 37 CFR § 1.192(c)(9) (2000). Appellant should be notified to submit a new Appeal Brief which contains a correct statement regarding the "Status of Amendments" and a new Appendix which includes a copy of claim 13; and

5. for such further action as may be appropriate.

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It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

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