

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK E. TUTTLE

Appeal No. 2002-2308
Application No. 08/943,889

ORDER REMANDING TO EXAMINER

Before STONER, Chief Administrative Patent Judge; HARKCOM, Vice Chief Administrative Patent Judge; and WILLIAM F. SMITH, Administrative Patent Judge.

Per curiam.

On consideration of the record, we note that this appeal includes a double patenting rejection under 35 U.S.C. § 101 based on In re Schneller, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). According to the Manual of Patent Examining Procedure (MPEP) § 804 (8th ed., Aug. 2001):

The decision in *In re Schneller* did not establish a rule of general application and thus is limited to the particular set of facts set forth in that decision. The court in *Schneller* cautioned "against the tendency to freeze into rules of general application what, at best, are statements applicable to particular fact situations." *Schneller*, 397 F.2d at 355, 158 USPQ at 215. Nonstatutory double patenting rejections based on *Schneller* **will be rare**. The Technology Center (TC) Director must approve any nonstatutory double patenting

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