THIS OPINION WAS WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today is binding precedent of the Interference Trial Section of the Board of Patent Appeals and Interferences. The opinion is otherwise not binding precedent. The decision was entered on 5 April 1999

Paper 29

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

NANCY M. GRAY and RAYMOND L. WOOSLEY

Junior Party,
(Patent 5,474,997),

v.

JAN HEERES, JEAN L. MESENS and JOZEF PEETERS

Senior Party
(Application 08/676,531).

Patent Interference No. 104,079

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

PER CURIAM.

JUDGMENT PURSUANT TO 37 CFR § 1.662

Upon consideration of the GRAY ET AL. ABANDONMENT OF CONTEST UNDER 37 C.F.R. § 1.662(a) (Paper 28), it is

ORDERED that judgment on priority as to Count 1, the sole count in the interference, is awarded against junior party NANCY M. GRAY and RAYMOND L. WOOSLEY.

FURTHER ORDERED that judgment on priority as to Count 1 is awarded in favor of senior party JAN HEERES, JEAN L. MESENS and JOZEF PEETERS.

FURTHER ORDERED that, on the record before the Board of Patent Appeals and Interferences, senior party JAN HEERES, JEAN L. MESENS and JOZEF PEETERS is entitled to a patent containing claims 13-25 (corresponding to Count 1) of application 08/676,531, filed July 9, 1996.

FURTHER ORDERED that junior party NANCY M. GRAY and RAYMOND L. WOOSLEY is not entitled to a patent containing claims 1-15 (corresponding to Count 1) of U.S. Patent 5,474,997, granted December 12, 1995, based on 08/341,266, filed November 17, 1994.

FURTHER ORDERED that notwithstanding the following sentence in the GRAY ET AL. ABANDONMENT OF CONTEST UNDER 37 C.F.R. § 1.662(a) (Paper 28):

> However, by abandoning the contest [due to a lack of commercial interest on the part of Sepracor, the real party in interest] as to Count 1, the party Gray *et al*. does not concede the issue of priority of invention to the party Heeres *et al*.

(1) the filing of the GRAY ET AL. ABANDONMENT OF CONTEST UNDER 37 C.F.R. § 1.662(a) (Paper 28) shall be treated as a request for entry of an adverse judgment (see 37 CFR § 1.662(a)) and

(2) the judgment entered today is a judgment on the merits which as between the parties to the interference establishes that JAN HEERES, JEAN L. MESENS and JOZEF PEETERS "made" (35 U.S.C. § 102(g)) the invention defined by Count 1 prior to NANCY M. GRAY and RAYMOND L. WOOSLEY.

FURTHER ORDERED that the preliminary statement filed by Heeres is returned unopened.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

FRED E. McKELVEY, Senior
Administrative Patent Judge

RICHARD E. SCHAFER
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

JAMESON LEE
Administrative Patent Judge

RICHARD TORCZON
Administrative Patent Judge