

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and is not binding precedent of the Board**

Paper \_\_\_\_

Filed by: Name of Administrative Patent Judge  
Administrative Patent Judge  
Box Interference  
Washington, D.C. 20231  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
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Junior Party  
(application or patent number),

v.

@

Senior Party  
(application or patent number).  
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Patent Interference No. 104,@  
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**ORDER  
TESTIMONY AND FILING OF THE RECORD  
BRIEFING SCHEDULE**

**A. Conference call**

A @ hearing/telephone conference call was held on  
@\_\_\_\_\_ @\_\_, 19@\_\_, at approximately @\_\_:\_\_ a/p.m.,  
involving:

1. @\_\_\_\_\_, Esq., counsel for  
@\_\_\_\_\_;
2. @\_\_\_\_\_, Esq., counsel for  
@\_\_\_\_\_;
3. @\_\_\_\_\_, Esq., for  
@\_\_\_\_\_;
4. @\_\_\_\_\_, Esq., counsel for  
@\_\_\_\_\_; and
5. Name of Administrative Patent Judge,  
Administrative Patent Judge.

**B. Relevant discussion during conference call**

The principal purpose of the conference call was to set times for taking action during the priority phase of the interference.

@insert any relevant discussion not otherwise covered herein.

**C. Motion for ruling on the admissibility of evidence**

At any appropriate time, a party may file a Rule 635 motion for a ruling on the admissibility of evidence. See Paragraph 32 of the NOTICE DECLARING INTERFERENCE (Paper 1).

**D. Time schedule for taking action**

1. @\_\_\_\_\_ Time for taking action with respect to settlement discussion (see Paragraph 45)

of the NOTICE DECLARING  
INTERFERENCE)

2. @ \_\_\_\_\_ Service (but not filing<sup>1</sup>) of junior party case-in-chief on the issue of priority and/or derivation
3. @ \_\_\_\_\_ Last day for cross-examination
4. @ \_\_\_\_\_ Service of senior party case-in-chief case<sup>2</sup> on the issue of priority and/or derivation
5. @ \_\_\_\_\_ Last day for cross-examination
6. @ \_\_\_\_\_ Filing of a paper under 37 CFR § 1.640(b) indicating the issues to be considered at the priority phase of final hearing
7. @ \_\_\_\_\_ Service (but not filing with the board) of one copy of the record.<sup>3</sup>

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<sup>1</sup> Various regulations require the filing of documents (e.g., affidavits) associated with a party's case-in-chief. The experience of the board is that those documents are rarely needed by board personnel until a time comes for determining priority. On occasion the documents can become misplaced. Additionally, documents served as part of a case-in-chief may become unnecessary at final hearing; for example, the parties may settle one issue even though others remain contested. Accordingly, there is no need to file documents associated with a party's case-in-chief until the time comes for filing the record. The documents which make up a case-in-chief can include among others affidavits (37 CFR § 1.672(b), (c) and (g), § 1.682(c) and §1.688(b) and (c)); deposition transcripts (37 CFR § 1.678; official records and printed publication (37 CFR § 1.682(a)); documents associated with another interference (37 CFR § 1.683) and documents associated with additional discovery (37 CFR § 1.688(a)). The documents will ultimately be filed when the original copy of the record is filed.

<sup>2</sup> See n.1, *supra*.

<sup>3</sup> See 37 CFR § 1.653. The record may include material not served with a case-in-chief, such as transcripts of cross-examination depositions. The record as served shall be identical to the record to be filed with the board and will be the record upon which a decision is made at final hearing.

8. @ \_\_\_\_\_ Time for taking action with respect to settlement discussion (see Paragraph 45 of the NOTICE DECLARING INTERFERENCE)
9. @ \_\_\_\_\_ Filing of **one copy** of junior party principal brief on the issue of priority and/or derivation
10. @ \_\_\_\_\_ Filing of **one copy** of each of:
- a. Senior party motion to exclude evidence
  - b. Senior party brief in opposition to junior party principal brief
  - c. Senior party principal brief on the issue of priority and/or derivation
11. @ \_\_\_\_\_ Filing of **one copy** of each of:
- a. Junior party opposition to senior party motion to exclude evidence
  - b. Junior party reply to senior party brief in opposition to junior party principal brief
  - c. Junior party brief in opposition to senior party principal brief
  - d. Junior party motion to exclude evidence

12. @ \_\_\_\_\_ Filing of **one copy** of each of:
- a. Senior party reply to junior party opposition to senior party principal brief
  - b. Senior party opposition to junior party motion to exclude evidence
13. @ \_\_\_\_\_ Filing of **one copy** of junior party reply to senior party opposition to exclude evidence
14. @ \_\_\_\_\_ "Last time" consisting of filing of:
- a. **An original and three copies** the record. Exhibits should be filed in an accordion folder, box or other folder containing all exhibits in numerical order (the copies of exhibit should be submitted in like fashion in an accordion folder, box or other folders).
  - b. **Three copies** of each principal brief, opposition brief and reply brief **and three copies** of each motion to exclude evidence, opposition thereto and reply thereto.
  - c. Any ZIP® disk and/or CD-ROM which a party elects to file.

The parties are authorized to stipulate different times (earlier or later) for all but the "last time provided, a notice

is filed with the board as soon as practical after any agreement is reached. The notice should be in the form of a photostatic copy of the order setting dates with old dates crossed out and new dates inserted by hand<sup>4</sup>

**E. Oral hearing before a merits panels**

The date and time for an oral hearing before a merits panels will be set by conference call in due course.

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Name of Administrative Patent Judge  
Administrative Patent Judge

Date: \_\_\_\_\_  
Arlington, VA

ORDERTE5  
Revised October 1999  
(replaces ORDERTE4)

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<sup>4</sup> The purpose of this requirement is to make it easy for personnel at the board to determine the changes in dates agreed to by the parties.