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Filed: March 23, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RICHARD STORER, GILLES GOSSELIN, JEAN-PIERRE SOMADOSSI,
and PAOLA LACOLLA

Junior Party
(US 7,608,600 B2)

v.

JEREMY CLARK
Senior Party
(Application No. 11/854,218)

Interference No. 105,981 (JGN)
Technology Center 1600

**JUDGMENT - REQUEST FOR ADVERSE
Bd.R. 127(b)(4)**

Before RICHARD SCHAFER, DEBORAH KATZ, and
JOHN G. NEW, *Administrative Patent Judges*.

NEW, Administrative Patent Judge

1 I.

2 On January 16, 2015, a merits panel of the Board entered a decision
3 on then-Senior Party Richard Storer, Gilles Gosselin, Jean-Pierre
4 Sommadossi, and Paola LaColla's ("Storer") and then-Junior Party Jeremy
5 Clark's ("Clark") substantive motions.¹ Paper No. 687. The panel
6 concluded, *inter alia*, that Storer's US Appl. No. 60/392,350 (the
7 "'350 application"), for which Storer had been accorded priority benefit,
8 failed to enable any of the 2'-fluoro-2'-C-methyl nucleosides that are
9 required by the count. *Id.* at 35–36. The panel consequently granted Clark's
10 motion 1 to deprive Storer of the benefit accorded with respect to Count 1 of
11 the '350 application. *Id.*

12 As a result, the interference was redeclared with Storer as the Junior
13 Party, Clark as the Senior Party, and with Clark's involved claims 164 and
14 165 and Storer's involved claims 1-12, 17, 18, 20, 33, 34, 36, 38, 49-57, 62,
15 64, and 76-85 corresponding to the new Count 2. Paper No. 688. A
16 scheduling order for the priority phase was also entered on January 16, 2015.
17 Paper No. 689. Storer's priority motion was due on February 27, 2015.
18 Paper 689, Appendix. Rather than filing its priority motion, Storer contacted
19 the Board via email to indicate that it did not intend to file a priority motion.
20 *See* Paper No. 692.

¹ On January 16, 2015, the Board also entered an order for Storer to show cause why, in view of the Board's decision on the parties' substantive motions, judgment should not be entered against it. Paper 690. Storer timely responded. Paper No. 691. Although the panel finds Storer's response to the order to show cause to be insufficient, Storer's response to the order to show cause played no role in the entry of this judgment.

1 II.

2 As Senior Party, Clark is entitled to the presumption under
3 Bd.R. 207(a)(1) that it is the prior inventor. *See also* Bd.R. 201, definition
4 of senior party. As the Junior Party, Storer therefore bears the burden of
5 establishing a date of inventorship prior to Clark's accorded benefit date of
6 May 30, 2003. *See* Bd. Rs. 121(b) and 208(b). By declining to file a
7 priority motion and forgoing the opportunity to prove an earlier date of
8 invention, Storer has effectively abandoned the contest. Storer's
9 abandonment of the contest is construed as a request for adverse judgment.
10 *See* Bd.R. 127(b)(4).

11 It is therefore—

12

13 ORDERED that judgment on priority be entered against Junior Party
14 Storer for the subject matter of count 2;

15

16 FURTHER ORDERED that claims 1-12, 17, 18, 20, 33, 34, 36, 38,
17 49-57, 62, 64, and 76-85 of Storer's involved U.S. Patent No. US 7,608,600
18 B2 be CANCELED, 35 U.S.C. 135(a)²; and

19

20 FURTHER ORDERED that a copy of this judgment be entered in the
21 administrative records of Storer's involved US 7,608,600 B2 patent and
22 Clark's involved US Appl. No. 11/854,218.

² As was in effect on March 15, 2013. *See* Pub. L. 112-29, § 3(n),
125 Stat. 284, 293 (2011).

1 FURTHER ORDERED that if a party seeks judicial review, the party
2 must file a notice with the Board (37 C.F.R. § 41.8(b)) within seven days of
3 initiating judicial review.

4

5 We also direct the parties' attention to *Biogen Idec MA, Inc., v.*
6 *Japanese Foundation for Cancer Research*, Civil No. 13–13061–FDS, 2014
7 WL 2167677 (D. Mass. May 22, 2014).

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NOTICE: “Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding.” 35 U.S.C. 135(c); see also Bd.R. 205 (settlement agreements).

cc (via electronic transmission):

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