

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GILBERT P. HYATT,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 09-1864 (RCL)
)	
ANDREI IANCU,)	
)	
Defendant.)	

JUDGMENT AND ORDER

Before the Court is plaintiff Gilbert Hyatt’s action brought under 35 U.S.C. § 145 concerning certain claims contained with his patent application 08/456,398 (the ’398 application), that had been disallowed by the United States Patent and Trademark Office. A total of twenty-eight claims in the ’398 application remain subject to Mr. Hyatt’s § 145 action before this Court: twenty-two rejected for lack of written description, and six because of anticipation.¹ A five-day trial began February 12, 2018,² during which new evidence was presented on each of the twenty-eight claims. *See* PTX-917. Upon consideration of the evidence and arguments presented at trial,

¹ Mr. Hyatt has also asked the Court to order patents to issue on ’398 application claims for which examiners’ rejections were reversed by the Board, but are not part of the present litigation. *See* 09-1864 ECF No. 220 at 1. The Constitution’s case or controversy requirement bars the Court from issuing an Order on claims not in dispute before it. U.S. CONST. ART. III, §2(1).

² The trial in 09-1864 was originally scheduled to begin on December 11, 2017. Due to a medical emergency on December 6, the Court vacated trial dates. Further, the Court had previously been assigned to sit by designation in the Western District of Texas beginning January 2, 2018. With the parties’ consent and to conserve judicial and the parties’ resources, and consistent with 28 U.S.C. §141(b)(1), the Chief Judge of the District Court for the District of Columbia authorized this trial to proceed as a special session in San Antonio, Texas, and trial was rescheduled to February 12, 2018. *See* 09-1864 ECF No. 215.

the subsequent proposed findings of fact and conclusions of law filed by both parties and the plaintiff's reply thereto, *see* ECF Nos. 220, 227, and 228, and the entire record in this case, it is hereby

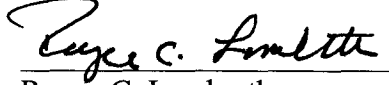
ORDERED that the defendant, Director of the United States Patent and Trademark Office shall issue a patent in Mr. Hyatt's '398 application at-issue in this case, covering Claims 117, 120, 121, 138, 186, 195, 361, and 455;

IT IS FURTHER ORDERED THAT the remaining claims that are at issue (122, 126, 138, 168, 174, 195, 279, 282, 285, 287, 290, 291, 294, 295, 298, 299, 300, 301, 302, 304, 378, 379, 380, 382, 437, 439, 456, 457, 458, 459, 460, 461, 462, 463, 467, 468, and 469) are DENIED.

IT IS FURTHER ORDERED THAT the issued patent shall reference the accompanying Opinion in this case, issued this day, and include the Figures upon which plaintiff relied at trial as evidence of written description support.

SO ORDERED.

Date: 7/31/18


Royce C. Lamberth
United States District Judge