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Paper 49
Filed: 31 August 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

DAVID **SHAFER**, WILHELM ULRICH,
AURELIAN DODOC, RUDOLF VON BUENAU,
HANS-JUERGEN MANN, ALEXANDER EPPLE,
SUSANNE BEDER, and WOLFGANG SINGER
Junior Party
(Application 11/653,366),

v.

YASUHIRO OMURA
Senior Party
(Patent 7,309,870).

Patent Interference No. 105,678 (SCM)

Before JAMESON LEE, SALLY GARDNER LANE, and SALLY C. MEDLEY,
Administrative Patent Judges.

MEDLEY, *Administrative Patent Judge.*

Judgment – Request for Adverse – Bd.R. 127(b)

ZEISS 1103

1 On 26 August 2009, Omura filed “OMURA RESPONSE 1 (to Shafer
2 Substantive Motion No. 1)” (Paper 47), in which Omura concedes that Omura’s
3 involved patent does not provide written description support for certain claim
4 terms found in all of Omura’s involved claims. (Paper 47 at 2:4-10). Omura also
5 does not seek to add new claims. The concession is construed as a request for
6 entry of adverse judgment. 37 C.F.R. §41.127(b)(3). The request is **granted**.

7 Accordingly, it is

8 **ORDERED** that judgment as to the subject matter of Count 1 (Paper
9 1 at 4) is entered against Omura;

10 **FURTHER ORDERED** that claims 21-24 of Omura’s involved
11 patent are CANCELLED, 35 U.S.C. § 135(a); and

12 **FURTHER ORDERED** that the parties shall note the requirements
13 of 35 U.S.C. § 135(c) and Bd.R. 205; and

14 **FURTHER ORDERED** that a copy of this judgment be entered in
15 the administrative records of the involved Omura patent and Shafer application.

1 cc (via electronic filing):

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