

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2006-1311
(Serial No. 10/190,039)

IN RE MARY K. HAYS

DECIDED: December 19, 2006

Before RADER, Circuit Judge, ARCHER, Senior Circuit Judge, and MOORE, Circuit Judge.

MOORE, Circuit Judge.

Mary K. Hays appeals the decision of the United States Patent and Trademark Office Board of Patent Appeals and Interferences (“the Board”). The Board affirmed the examiner’s rejection of claims 1, 3, 5, 6, 8, 9, 12-14, 16, and 18-20 in U.S. Patent Application No. 10/190,039 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,475,676. Ex parte Hays, No. 06-0173 (Dec. 22, 2005). Because the Director of the United States Patent and Trademark Office has conceded that the Board’s decision is in error with respect to the anticipation rejection, we vacate and remand. See In re Gould, 673 F.2d 1385, 1387 (C.C.P.A. 1982) (granting a motion for remand where “the Commissioner has informed us, through the solicitor that the Patent and Trademark Office (PTO) will enter a new rejection of the sole claim on appeal...whenever it regains jurisdiction over the subject application”).