

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

ROBERT LOUGHLIN AND JOHN LOUGHLIN,
Appellants,

v.

RENNY TSE-HAW LING AND CHUN-SHENG WU,
Appellees.

2011-1432
(Interference No. 105,766)

Appeal from the United States Patent and Trademark
Office, Board of Patent Appeals and Interferences.

ON MOTION

Before LOURIE, *Circuit Judge.*

O R D E R

Renny Tse-Haw Ling and Chen-Sheng Wu (Ling) move to dismiss Robert Loughlin and John Loughlin's (Loughlin) appeal. Loughlin oppose. Ling reply.

The United States Patent and Trademark Office, Board of Patent Appeals and Interferences declared an interference between Ling and Loughlin. During the

preliminary motions phase of the proceedings, Loughlin moved for judgment against Ling, asserting that Ling had no authority to file the claims involved in the interference, pursuant to 35 U.S.C. § 135(b)(2). The Board denied the motion. Subsequently, Loughlin requested an entry of adverse judgment, which the Board granted, so that they could appeal the Board's denial of their motion for judgment against Ling. This appeal followed.

Ling argues that, because Loughlin conceded priority, they cannot now appeal the Board's judgment in order to contest the denial of their motion for judgment against Ling. Loughlin asserts that the Board's denial of the motion involved a threshold issue, which if decided in Loughlin's favor would have ended the interference prior to adjudicating the merits of the interference.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied without prejudice to the parties presenting these arguments in their briefs. Loughlin's brief is due within 30 days from the date of filing of this order.

FOR THE COURT

SEP 06 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Glen M. Diehl Esq.
Todd R. Walters, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

SEP 06 2011

JAN HORBALY
CLERK