

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TSE W. CHANG and NANCY T. CHANG

Appeal No. 93-3529
Application 07/785,565¹

ON BRIEF

Before CAROFF, GRON and ELLIS, **Administrative Patent Judges**.

ELLIS, **Administrative Patent Judge**.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 2, which are all the claims pending in the application. Claim 1

¹ Application for patent filed November 4, 1991. According to the appellants this application is a division of Application 07/455,080, filed December 22, 1989, now U.S. Patent 5,089,603, which is a continuation-in-part of Application 07/369,479, filed June 21, 1989, now U.S. Patent 5,079,344.

Appeal No. 93-3529
Application 07/785,565

is illustrative of the subject matter on appeal and reads as follows:

1. A method of using a peptide including an amino acid sequence corresponding to the extracellular segment of the membrane-bound domain of IgA or an epitope thereof, comprising immunizing an animal with said peptide to produce antibodies which target the extracellular segment of the membrane-bound domain of IgA.

The reference relied on by the examiner is:

Altman et al. (Altman) 4,636,463 Jan. 13, 1987

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over Altman. We **reverse**.

The examiner has predicated her conclusion of obviousness on Altman, a reference which discloses a method of using chemically-synthesized polypeptides which correspond to antigenic determinants of interleukin-2 to immunize animals to produce antibodies specific for said determinants.

The sole issue before us is the examiner's contention that when a claim is directed to a process, the starting material(s) employed and end product(s) obtained, are immaterial. **In re Durden**, 763 F.2d 1406, 1410, 226 USPQ 359, 362 (Fed. Cir. 1985). However, she has not provided any reasons on this record as to why the subject matter as a whole would have been obvious to one of ordinary skill in this art at the time the application was

Appeal No. 93-3529
Application 07/785,565

filed. We find the examiner's reliance on *In re Durden* alone, is misplaced. See *In re Brouwer*, 77 F.3d 380, 37 USPQ2d 1663 (Fed. Cir. 1995; *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995).

Accordingly, the rejection is reversed.

The decision of the examiner is reversed.

REVERSED

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MARC L. CAROFF)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TEDDY S. GRON)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOAN ELLIS)	
Administrative Patent Judge)	

Appeal No. 93-3529
Application 07/785,565

Eric Mirabel
Tanox Biosystems
10301 Stella Link
Houston, TX 77025