

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARTHUR E. FRANKE

Appeal No. 94-3279
Application 07/892,598¹

ON BRIEF

Before WINTERS, WILLIAM F. SMITH, and GRON, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

¹ Application for patent filed May 29, 1992. According to appellant, the application is a continuation of Application 07/393,618, filed August 14, 1989, now abandoned; which is a continuation of Application 06/657,091, filed October 2, 1984, now Patent No. 4,935,370; which is a continuation-in-part of Application 06/564,962, filed December 23, 1983, now abandoned.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 67 through 70 and 72 through 79, all the claims in the application.

Claims 80, 81, and 82 are illustrative of the subject matter on appeal and read as follows:

80. A process for using an E. coli comprising an expression plasmid comprising:
(i) an E. coli trp promoter;
(ii) the nucleotide sequence TAAAAGGAGAATTC encoding a ribosome binding site for translation of element (iii); and
(iii) a structural gene coding the amino acid sequence of a heterologous protein,
to produce said heterologous protein, which process comprises cultivating said E. coli comprising said expression plasmid in an aqueous medium comprising an assimilable source of carbon, nitrogen and inorganic salts.

81. A process for using an E. coli comprising an expression plasmid comprising:
(i) an E. coli trp promoter;
(ii) the nucleotide sequence TAAAAGGGTATCGAGAATTC encoding a ribosome binding site for translation of element (iii); and
(iii) a structural gene coding the amino acid sequence of a heterologous protein,
to produce said heterologous protein, which process comprises cultivating said E. coli comprising said expression plasmid in an aqueous medium comprising an assimilable source of carbon, nitrogen and inorganic salts.

82. A process for using a microorganism selected from the group consisting of E. coli K-12 strains comprising plasmid pPFZ-R2 and E. coli strains comprising plasmid pPFZ-R4 to produce prorennin, which process comprises cultivating said microorganism in an aqueous nutrient medium comprising an assimilable source of carbon, nitrogen and

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inorganic salts until a substantial amount of prorennin is expressed; and isolating said prorennin.

The reference relied upon by the examiner are:

Alford et al. (Alford) 4,666,847 May 19, 1987

Goeddel et al. (Goeddel), "Direct expression in Escherichia coli of a DNA sequence coding for human growth hormone," Nature, vol. 281, p. 544-48 (1979)

Claims 67, 68, 72, and 80 through 86 stand rejected under 35 U.S.C. § 103 as unpatentable over Alford. Claims 69 and 70 stand rejected under 35 U.S.C. § 103 as unpatentable over Goeddel.

After considering the record in this appeal, we hold that the examiner has not established a prima facie case of obviousness. See In re Brouwer, 77 F.3d 422, 37 USPQ2d 1663 (Fed. Cir. 1996); In re Ochiai, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995). Accordingly, we reverse the two rejections under 35 U.S.C. § 103 which are pending in this appeal.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

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Application 07/892,598

Sherman D. Winters)	
Administrative Patent Judge)	
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William F. Smith)	APPEALS AND
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