

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(2) is not binding precedent of the Board.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 KLAUS-HELMUT MULLER

Appeal No. 95-0882
Application 08/024,571¹

ON BRIEF

Before KIMLIN, GARRIS, and WEIFFENBACH, Administrative Patent
Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1
through 8, 10 and 11. The only other claim in the application,
which is claim 9, stands withdrawn from further consideration by
the examiner as being directed to a nonelected invention.

¹ Application for patent filed March 1, 1993.

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The subject matter on appeal relates to a process for preparing sulphonylurea salts by reacting a sulphonamide to form a sulphonamide salt which is then reacted with a carbamate (urethane) to thereby yield the desired salt product. This appealed subject matter is adequately illustrated by independent claim 1, a copy of which taken from the appellant's brief is appended to this decision.

The following references are relied upon by the examiner as evidence of obviousness:

Föry et al. (Fory)	4,690,707	Sep. 1, 1987
Riebel et al. (Riebel) (Canada)	2,032,398	Jun. 20, 1991

Claims 1 through 8, 10 and 11² are rejected under 35 U.S.C. § 103 as being unpatentable over Fory in view of Riebel.

We cannot sustain this rejection.

It is the examiner's basic position that Riebel would have suggested to one with ordinary skill in the art "replacing the intermediate sulphonamide [of Fory] with its salt and reacting it

² We note that the amendment correcting minor informalities in dependent claims 3, 6 and 7 which accompanied the brief has not been clerically processed. This oversight should be corrected upon return of the application to the jurisdiction of the examiner.

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with the triazine carbamate and expect the same result as in the instant invention, due to the same triazinyl carbamate core" (answer, page 4). We cannot agree.

We appreciate that Riebel might have suggested to an artisan with ordinary skill the desirability and thus the obviousness of transforming the sulphonylureas of Fory into sulphonylurea salts of the type defined by the appealed claims and disclosed by Riebel. However, it is our perception that these applied references would have suggested such a transformation via the reaction mechanism taught by Riebel wherein the sulphonylureas are reacted with alkaline metal hydroxides. On the reference evidence of record before us, we discern no teaching or suggestion, and the examiner points to none, which would have motivated the artisan to transform the sulphonylureas of Fory into sulphonylurea salts via the here claimed sulphonamide salt reaction mechanism, which is not disclosed in either applied reference, rather than via the reaction mechanism expressly taught by Riebel.

In light of the foregoing, it is our determination that the examiner's obviousness conclusion is based upon impermissible hindsight derived from the appellant's own disclosure rather than some teaching, suggestion or incentive derived from the applied prior art. It follows that we cannot sustain the examiner's

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section 103 rejection of claims 1 through 8, 10 and 11 as being unpatentable over Fory in view of Riebel.

The decision of the examiner is reversed.

REVERSED

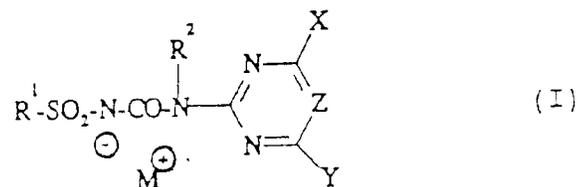
Edward C. Kimlin)	
Administrative Patent Judge)	
)	
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Bradley R. Garris)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
Cameron Weiffenbach)	
Administrative Patent Judge)	

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APPENDIX

1. A process for preparing sulphonylurea salts of the formula



in which

M⁺ represents an alkali metal ion or an alkaline earth metal ion equivalent,

R¹ represents in each case optionally substituted aryl, aralkyl or heteroaryl,

R² represents hydrogen or in each case optionally substituted alkyl, alkenyl, alkynyl or aralkyl,

X represents hydrogen, halogen or alkyl, alkoxy, alkylthio or alkylamino, in each case optionally substituted by halogen or alkoxy,

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Y represents hydrogen, halogen or alkyl or alkoxy, in each case optionally substituted by halogen, and

Z represents nitrogen, a CH group or a C-halogen group,

wherein sulphonamides of the formula

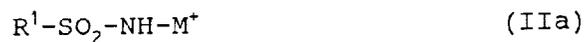


in which

R¹ has the abovementioned meaning,

are first reacted with alkali metal hydroxides or alcoholates or with alkaline earth metal hydroxides or alcoholates optionally in the presence of a diluent at temperatures between -20°C and +150°C (step 1)

and the sulphonamide salts thus formed, of the formula

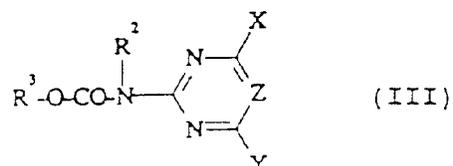


in which

M and R¹ have the abovementioned meaning,

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are then reacted with urethanes (carbamates) of the formula



in which

R², X, Y and Z have the abovementioned meaning and

R³ represents alkyl, aralkyl or aryl,

optionally in the presence of a diluent at temperatures between -20°C and +150°C (step 2) and the products of the formula (I) are isolated by conventional methods.