

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTON VLAS
and HANS J. WILLIE

Appeal No. 95-1535
Application 08/012,801¹

ON BRIEF

Before RONALD H. SMITH, JOHN D. SMITH and PAK, Administrative Patent Judges.

RONALD H. SMITH, Administrative Patent Judge.

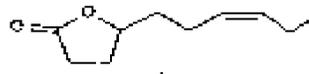
DECISION ON APPEAL

This is an appeal from the final rejection of claims 6-10, all the pending claims in the application.

¹ Application for patent filed February 2, 1993. According to appellants, the application is a continuation of Application 07/740,516, filed August 5, 1991, now abandoned.

The invention relates to the use of gamma-jasmolactone as a flavoring agent to impart a fruity flavor to foods or beverages. Claims 6, 8 and 9, the only independent claims, read as follows:

6. A composition which comprises an ingestible food or beverage, and an effective amount of gamma-jasmolactone of the formula:



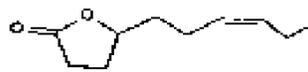
sufficient to impart a fruity flavor to said composition.

8. In a fruity flavoring composition, the improvement which comprises including from 0.1 to 10 wt.% of gamma-jasmolactone of the formula:



in said composition to improve its fruity flavor.

9. The method of flavoring a composition which comprises adding to said composition an amount of gamma-jasmolactone of the formula:



sufficient to impart a fruity flavor to said composition.

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Appellants indicate on page 4 of their brief that claims 6-10 can be considered to stand or fall together.

37 CFR

§ 1.192(c)(7) (1996). The reference relied on by the examiner is:

Furia et al. (Furia), "Natural Flavors," Fenaroli's Handbook of Flavor Ingredients, 2nd Ed., 1975, Vol. I, CRC Press: Cleveland, pages 370-380.

Claims 6-10 stand rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103 as obvious over Furia in view of the admitted state of the art. We will not sustain these rejections.

All the claims at issue require an effective amount of gamma-jasmolactone "to impart a fruity flavor" to the composition or 0.1 to 10 wt. % of gamma-jasmolactone "to improve its fruity flavor." As pointed out by appellants, the Furia reference does not disclose these limitations. Accordingly, the rejection under 35 U.S.C. § 102(b) cannot be sustained.

Similarly, with respect to the rejection under 35 U.S.C. § 103, we find no suggestion in the Furia reference to utilize gamma-jasmolactone in sufficient amount to impart a fruity flavor

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to a food composition or beverage. The Furia reference does disclose that jasmine derivatives exhibit an "intensely floral aroma" and may be used in perfumery or for flavoring liqueurs and pastry, etc., in amounts of 0.1 to 2,000 ppm. It is known that

gamma-jasmolactone is one of the three main odorous components of jasmine (page 1 of the application). However, as pointed out by appellants, there is simply no suggestion in the reference of the use of gamma-jasmolactone in sufficient amount to impart a fruity flavor to food or beverage. The unexpectedness of the claimed invention is attested to in the declaration of Martin Glasius, an expert flavorist.

The decision of the examiner is reversed.

REVERSED

RONALD H. SMITH
Administrative Patent Judge

JOHN D. SMITH
Administrative Patent Judge

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) APPEALS AND
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CHUNG K. PAK
Administrative Patent Judge

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