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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOHANN KARL and
FRIDL LANG

_____

Appeal No. 95-2371
Application 07/771,097[1]

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ON BRIEF

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Before WILLIAM F. SMITH, ELLIS, and ROBINSON, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 1 through 16 and 18 through 20, all the claims remaining in the application.

[1] Application for patent filed October 4, 1991.

Claims 1 and 14 are illustrative of the subject matter on appeal and read as follows:

1. A method for determining an analyte in a sample solution, said method comprising: contacting said sample solution with a receptor in solution which specifically binds to said analyte to form a precipitate; and quantitatively measuring the amount of formation of said precipitate by a nephelometric or turbidimetric method as a measurement of the amount of said analyte present in said sample solution; said contacting of said sample solution with said receptor being in the presence of at least one non-ionic polymer selected from the group consisting of a polyvinyl pyrrolidine having molecular weight of at least 360,000 and a polyethylene glycol having a molecular weight of at least 40,000.

14. Reagent useful in determining an analyte via a precipitation reaction, comprising: a receptor comprising at least one antibody which specifically binds to said analyte to form a precipitate, and at least one non-ionic polymer selected from the group consisting of a polyvinyl pyrrolidine having a molecular weight of at least 360,000 and a polyethylene glycol having a molecular weight of at least 40,000.

The references relied upon by the examiner are:

Cole	5,102,788	Apr. 7, 1992 (Filed Apr. 28, 1989)
Chichibu et al. (Chichibu) (Japanese Kokai)	58-2660	Jun. 30, 1981[2]

Hellsing, Automated Immunoanalysis, Chapter 3: Enhancing Effects of Nonionic Polymers on Immunochemical Reactions, pp. 67-112 (1977)

[2] It appears that the examiner's consideration of this reference has been limited to an English language abstract thereof. We have obtained a full text translation of this Japanese language document and have based our consideration of the examiner's rejection on the full text translation.

Claims 1 through 16 and 18 through 20 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Chichibu, Hellsing and Cole. We reverse.[3]

Discussion

The claims on appeal all require the presence or use of a polyvinyl pyrrolidine polymer having a molecular weight of at least 360,000 or a polyethylene glycol polymer having a molecular weight of at least 40,000. We agree with appellants' arguments in the Appeal Brief that the three references relied upon by the examiner do not teach or suggest the use of these polymers and, in fact, teach away from using such polymers. See, e.g., Appeal Brief, page 5, last full paragraph.

Chichibu does teach the use of a high molecular weight saccharide polymer in an assay system similar to that required by the claims on appeal. However, the only high molecular polymers described in the reference are saccharide polymers. Chichibu does teach that a polyethylene glycol polymer may be used in that assay. However, the molecular weight of the polyethylene glycol polymer is 6,000. See page 7 of the translation. Thus, we agree with appellants' position that the prior art tends to teach away from, not towards, the claimed subject matter. The examiner relies upon the paragraph

[3] Our reversal of the examiner's rejection renders moot appellants' "REQUEST FOR RESCHEDULING OF ORAL HEARING." A request was re-filed by facsimile on May 18, 1999 and is designated as Paper No. 27 in the administrative file.

bridging pages 73-74 of Hellsing. However, the only high molecular weight polymers described in this portion of the reference are again saccharide polymers. The examiner relies upon Cole for its teachings such as those set forth at column 5, lines 51-61, that assay systems may use nonionic polymers such as polyethylene glycol, polyvinyl pyrrolidine, or dextran. However, the examiner has not established that Cole teaches or suggests using polyethylene glycol or polyvinyl pyrrolidine having a molecular weight as required by the claims on appeal.

The decision of the examiner is reversed.

REVERSED

William F. Smith	)
Administrative Patent Judge	)
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	)
	) BOARD OF PATENT
Joan Ellis	)
Administrative Patent Judge	) APPEALS AND
	)
	) INTERFERENCES
	)
Douglas W. Robinson	)
Administrative Patent Judge	)

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