

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte PAUL O.P. TS'O and LAURE AURELIAN

---

Appeal No. 1995-3147  
Application No. 07/946,023<sup>1</sup>

---

ON BRIEF

---

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

WINTERS, Administrative Patent Judge.

---

<sup>1</sup> Application for patent filed September 11, 1992. According to appellants, this application is a continuation of Application No. 07/614,696, filed November 19, 1990, now abandoned; which is a continuation of Application No. 07/368,156, filed June 15, 1989, now abandoned; which is a continuation of Application No. 06/764,778, filed August 12, 1985, now abandoned.

Appeal No. 1995-3147  
Application No. 07/946,023

DECISION ON APPEAL

This appeal was taken from the examiner's decision rejecting claims 31, 32 and 36 through 38, which are all of the claims remaining in the application.

Claims 32 and 38 are representative:

32. A method of treating HSV-2 infection which comprises administering intranasally to a host subject to said infection an effective amount of a ribosyl polyinosinic acid-polycytidylic acid-polyuridylic acid copolymer.

38. A therapeutic composition for treating viral diseases by enhancing immunological protection by increasing natural killer cell activity in an animal in need thereof comprising a polynucleotide of the formula polyrI@polyr(C<sub>12</sub>U), an antibacterial, antifungal compound, and an inorganic salt for maintaining the intactness of said polynucleotide, said salt being sodium chloride, potassium chloride or magnesium chloride.

The references relied on by the examiner are:

Chain et al. (Chain)	3,975,520	Aug. 17, 1976
Ishida et al. (Ishida)	3,980,776	Sep. 14, 1976
Ts'o et al. (Ts'o)	4,024,222	May 17, 1977
Bernstein et al. (Bernstein)	4,603,131	Jul. 29, 1986

Klaus Munk et al. (Munk), 77 Chemical Abstracts no. 32470j, 356 (1972)

The Merck Index: An Encyclopedia of Chemicals and Drugs 137, 270, 1202 (9th ed., Merck & Co., Inc., New Jersey 1976)

The appealed claims stand rejected as follows: (1)  
claims 37 and 38 under 35 U.S.C. § 112, first paragraph, as

Appeal No. 1995-3147  
Application No. 07/946,023

based on a non-enabling disclosure in view of the recitations "a method of treating viral diseases" and "a therapeutic composition for treating viral diseases"; (2) claims 31 and 38 under 35 U.S.C. § 112, first paragraph, as based on a non-enabling disclosure in view of the recitations "anti-fungal, anti-bacterial compound" and "antibacterial, antifungal compound"; (3) claims 37 and 38

Appeal No. 1995-3147  
Application No. 07/946,023

under 35 U.S.C. § 101 as based on a lack of demonstrated utility

that the claimed method and composition are effective for the treatment of "viral diseases"; (4) claims 32, 36, and 37 under 35 U.S.C. § 103 as unpatentable over Ts'o in combination with Munk and Chain or Ishida; and (5) claims 31 and 38 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Ts'o, Munk, Chain, Ishida, The Merck Index, and Bernstein.

On consideration of the record, including the Appeal Brief, the Examiner's Answer, and the Aurelian Declaration executed May 7, 1992, and attachments thereto, we find that the examiner's rejections lack merit.

Accordingly, it is ORDERED that the rejection of claims 37 and 38 under 35 U.S.C. § 112, first paragraph; the rejection of claims 31 and 38 under 35 U.S.C. § 112, first paragraph; the rejection of claims 37 and 38 under 35 U.S.C. § 101; the rejection of claims 32, 36 and 37 under 35 U.S.C. § 103 as unpatentable over Ts'o in combination with Munk and Chain or Ishida; and the rejection of claims 31 and 38 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of

Appeal No. 1995-3147  
Application No. 07/946,023

Ts'o, Munk, Chain, Ishida, The Merck Index, and Bernstein, be  
reversed.

REVERSED

SHERMAN D. WINTERS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	
	)	
WILLIAM F. SMITH	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
	)	
HUBERT C. LORIN	)	
Administrative Patent Judge	)	

SDW:clm

Appeal No. 1995-3147  
Application No. 07/946,023

Pillsbury Madison & Sutro LLP  
Cushman, Darby & Cushman IP Group  
Ninth Floor  
1100 New York Ave., N.W.  
Washington, DC 20005-3918