

The opinion in support of the decision being entered today was *not* written for publication and is *not* precedent of the Board.

Paper No. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANCOIS CLEMENCE, JEAN-LUC HAESSLEIN
and CLAUDE OBERLANDER

Appeal No. 1997-2355
Application 08/228,300

HEARD: JULY 12, 2000

Before KIMLIN, OWENS and WALTZ, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

ON REQUEST FOR REHEARING

Appellants request reconsideration of our decision mailed on September 22, 2000 wherein we affirmed the rejections of claims 2, 7, 8, 11, 27, 28, 37 and 41 under 35 U.S.C. § 103 over Clemence and over Aktogu '396 in view of Clemence.

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Appellants argue that the rejections of claims 11 and 41 should be reversed because these claims are of the same scope as allowed claim 5. Claims 11 and 41, however, include the specie [16 α , (+)]-15-methyl-20,21-dinoreburnamenine, which is the specie upon which the examiner's *prima facie* case of obviousness is based. This specie has been deleted from claim 5 (amendment filed January 10, 1996, paper no. 15, page 2).

Appellants argue that the board did not take into account a typographical error in the Oberlander declaration dated February 6, 1992 wherein, appellants argue, "Example 4" with respect to Clemence should have read "Example 5". As pointed out in our decision (page 7), both the examiner and appellants referred on the record to a comparison against Clemence's example 4, and our decision was based on that record. Appellants include with their request a declaration by Jean Claude Vieillefosac. This declaration is not timely, as it was not made of record and considered by the examiner prior to our decision. Consequently, we do not consider this declaration at this time.

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We have considered appellants' request that we reconsider our decision, but for the above reasons we decline to make any change thereto.

DENIED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

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