

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(2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MARIA PERSICO AND DOMENICO MAGLIONE,
Junior Party,¹

v.

MARVIN L. BAYNE AND KENNETH A. THOMAS, JR.,
Senior Party.²

Patent Interference No. 104,082

Before RONALD H. SMITH, SOFOCLEOUS, and CAROFF, Administrative

¹ Application 08/039,297, filed April 19, 1993. Accorded the benefit of PCT/IT91/00079, filed September 26, 1991. Assignors to Consiglio Nazionale delle Ricerche of Rome, Italy.

² Application 08/586,039, filed January 16, 1996. Accorded the benefit of U.S. Application 08/124,259, filed September 20, 1993; and U.S. Application 07/676,436, filed March 28, 1991. Assignors to Merck and Co., Inc.

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Patent Judges.

Caroff, Administrative Patent Judge.

JUDGMENT

Persico et al., the junior party, has filed a concession of priority (Paper No. 13) which, pursuant to 37 CFR § 1.662(a), is treated as a request for entry of an adverse judgment as to all claims of the junior party corresponding to the count.

Accordingly, judgment as to the subject matter of the sole count in issue is hereby awarded to Bayne et al., the senior party. Persico et al. are not entitled to a patent containing their claims 1, 3, 12, 20, 32-34, and 37-45 corresponding to the count. On this record, Bayne et al. are entitled to a patent containing their claims 4, 7, 9, 12, 14, 17, 19, 22, 40, 50, 52, 62, 64, 74 and 75 corresponding to the count.

We note that the primary examiner has indicated in her initial memorandum (form PTO-850) that the senior party's claims not corresponding to the count are considered unpatentable. We also note that by judgment in earlier

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interference 103,825, Persico et al. was found not to be
entitled to a patent

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containing their claim 23 which, in the present interference,
has been designated as not corresponding to the count.

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Administrative Patent Judge)	
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Administrative Patent Judge)	

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Attorneys for Persico et al.:

Robert G. Weilacher
BEVERIDGE, DEGRANDI, WEILACHER & YOUNG
Suite 800
1850 M Street, N.W.
Washington, D.C. 20036

Attorneys for Bayne et al.:

J. Mark Hand
c/o Patent Department
MERCK & CO., INC.
P.O. Box 2000
Rahway, New Jersey 07065-0907