

Appeal No. 95-4487  
Application 07/852,214

***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(2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID J. BLYTHIN

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Appeal No. 95-4487  
Application 07/852,214<sup>1</sup>

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On BRIEF

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Before JOHN D. SMITH, GARRIS and WARREN, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

*Decision on Appeal*

This is an appeal under 35 U.S.C. ' 134 from the decision of  
the examiner finally rejecting claims 1 through 9, all of the  
claims in the application.

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<sup>1</sup> Application for patent filed May 29, 1992.

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The appealed claims as represented by claim 1 are drawn to a compound having a 1,8-naphthyridine nucleus which is substituted by, *inter alia*, an optionally substituted phenyl moiety in the -1- position, oxo in the -2- position, a nitrogen containing heterocycle bonded through the nitrogen in the -3- position and hydrogen or alkyl in the -4- position. According to appellant, the claimed naphthyridine compounds or a pharmaceutically acceptable salt thereof are useful in the treatment of allergy, inflammation, hyperproliferative skin disease and peptic ulcers (specification, e.g., page 3).

The references relied on by the examiner are:

Blythin et al. (Blythin)	4,794,116	Dec. 27, 1988
Teulon (published French Pat. Specification)	2,567,720	Jan. 17, 1986

The examiner has rejected claims 1 through 9 on appeal under 35 U.S.C. ' 103 as being unpatentable over Teulon and Blythin. We reverse.

Rather than reiterate the respective positions advanced by the examiner and appellant, we refer to the examiner's answer and to appellant's main and reply briefs for a complete exposition thereof.

#### *Opinion*

We have carefully reviewed the record on this appeal and based thereon conclude that the examiner has not established that the claimed compounds and pharmaceutical salts of the appealed claims are *prima facie* obvious over the combination of Teulon and

Blythin taken as a whole. We do not find in the record before us any factual basis on which it would be reasonable to infer that one of ordinary skill in this art would have been reasonably motivated to interchange a nitrogen containing heterocycle for the primary amino substituent in the -3- position of the 1,8-naphthyridinyl compound of Teulon Example 6 where the vicinyl or -4- position is unsubstituted. While the examiner points to Blythin as showing the interchangeability of a primary amino group with a heterocyclic group in that position in 1,8-naphthyridinyl compounds which have the same utility, we are of the view that, in this instance, the presence of the functional group  $-Z^2R^6$  in the -4- position of Blythin's compounds would, in the absence of evidence to the contrary, have reasonably suggested to one of ordinary skill in this art that further substitution, including cyclization, of the primary amino substituent in the -3- position of the 1,8-naphthyridinyl compound of Teulon Example 6 would require the presence of such functional group in the -4- position. *Cf. In re Payne*, 606 F.2d 303, 315, 203 USPQ 245, 254-55 (CCPA 1979).

The examiner's decision is reversed.

*Reversed*

