

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HARALD D. MULLER and YOSHINOBU UEBA

Appeal No. 95-4716
Application 08/124,227¹

ON BRIEF

Before: SCHAFER, Administrative Patent Judge, and
McKELVEY, Senior Administrative Patent Judge, and
WALTZ, Administrative Patent Judge.

McKELVEY, Senior Administrative Patent Judge.

Decision on appeal under 35 U.S.C. § 134

The appeal is from a decision of the Primary Examiner rejecting claims 11-24 as being unpatentable under 35 U.S.C. § 103 over Engler I (U.S. Patent 4,111,857) "in view of" Engler III (U.S. Patent 4,089,857), Inokuchi (European Patent Application 0 204 419 published December 10, 1986) and Gemmell ("A Straightforward Approach to the Synthesis of Unsymmetrical

¹ Application for patent filed September 21, 1993. Appellants claim priority based on Japanese application 4-262348 filed September 30, 1992.

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Tetrathioalkyl Tetrathiafulvalene Derivatives," 33 Tetrahedron Letters 3923-26 (1992)).

Upon consideration of the record, including APPELLANTS' BRIEF ON APPEAL (Paper 13), the EXAMINER'S ANSWER (Paper 14) and the REPLY BRIEF (Paper 15), it is

ORDERED that the decision of the examiner rejecting claims 11-24 is reversed.

The prior art fails to describe or render obvious the first step in independent claims 11 or 12 (treating 1,3,4,6-tetrathiapentalene-2,5-dione at a temperature of 30°C or lower in an alcohol solution containing an alkali metal alkoxide in an inert atmosphere to form 1,3-dithiolate dianion). Accordingly, the claimed processes, as a whole, would not have been rendered obvious by the prior art cited by the examiner. The examiner's reliance (Examiner's Answer, page 4) on In re Durden, 763 F.2d 1406, 226 USPQ 359 (Fed. Cir. 1985) is misplaced. See In re Ochiai, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995).

REVERSED

RICHARD E. SCHAFER)
Administrative Patent Judge)
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)

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_____)	
FRED E. MCKELVEY, Senior)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
_____)	
THOMAS WALTZ)	
Administrative Patent Judge)	

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cc:

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