

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(2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GEORGE J. PIAZZA and MICHAEL J. HAAS

Appeal No. 95-5155
Application 07/855,805¹

ON BRIEF

Before WILLIAM F. SMITH, Administrative Patent Judge,
McKELVEY, Senior Administrative Patent Judge, and GRON,
Administrative Patent Judge.

GRON, Administrative Patent Judge.

DECISION ON APPEAL UNDER 35 U.S.C. § 134

This is an appeal from an examiner's final rejection of
Claims 1-8, all claims pending in this application. Claims 1-

¹ Application for patent filed March 23, 1992.

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8 stand rejected under 35 U.S.C. § 103 as unpatentable in view of the combined teachings of Lee et al. (Lee), "Oat (*Avena sativa*) Caryopses as a Natural Lipase Bioreactor," *JAOCS*, Vol. 67, no. 11, pp. 761-765 (November 1990), and Balsam, U.S. 3,713,980, patented January 30, 1973.

On consideration of the record, including the Brief on Appeal, Examiner's Answer, the applied prior art, and Hammond et al. (Hammond), U.S. 5,089,403, patented February 18, 1992, the latter to aid our understanding of Lee's teaching and its relationship to the subject matter of the claims on appeal, it is

ORDERED that the examiner's decision rejecting Claims 1-8 is reversed.

Balsam neither (1) falls within the same field of endeavor as the subject matter claimed, nor (2) is reasonably pertinent to the particular problem with which applicants are concerned. Applicants' invention is directed to a rapid process for hydrolyzing oleaginous materials into fatty acids and glycerol using lipase, in this case immobilized lipase in the form of comminuted lipase-containing seeds. Balsam is concerned with extracting therapeutic peruvoside from the

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fruit or seeds of *Apocynacea Thevetia peruviana* (Balsam, Abstract). We find Balsam's teaching non-analogous to the invention here claimed. In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979).

Moreover, even assuming Balsam is analogous prior art, we are at a loss to understand how Balsam's teaching to comminute and ferment *Apocynacea Thevetia peruviana* seeds to facilitate extraction of therapeutic peruvoside would have led persons having ordinary skill in the art to do what Lee indicates (page 761, abstract) and its counterpart Hammond expressly states (col. 3, l. 44-50) should not be done, i.e., comminute lipase-containing seeds used to hydrolyze oleaginous materials.

REVERSED

WILLIAM F. SMITH)	
Administrative Patent Judge)	
)	
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)	
FRED E. MCKELVEY)	BOARD OF PATENT
Senior Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	

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TEDDY S. GRON)
Administrative Patent Judge)

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