

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARL S. BOOS, ANDREAS WALFORT
FRIEDHELM EISENBEISS and DIETER LUBDA

Appeal No. 96-3141
Application No. 08/415,766¹

ON BRIEF

Before WINTERS, WILLIAM F. SMITH and ROBINSON, Administrative Patent Judges.

WINTERS, Administrative Patent Judge.

DECISION ON APPEAL

This appeal was taken from the examiner's decision rejecting claims 1 through 5 and 17 through 21. Claims 6 through 16, the only other claims remaining in the application, stand withdrawn from further consideration by the examiner as being directed to a non-elected invention.

¹ Application for patent filed April 3, 1995. According to appellants, the application is a continuation of Application 08/111,963, filed August 26, 1993, now abandoned; which is a continuation of Application 07/943,793, filed September 11, 1992, now abandoned.

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Representative Claim

Claim 1, which is illustrative of the subject matter on appeal, reads as follows:

1. An internal surface reverse-phase packing material for liquid chromatography, comprising a porous particle support having an outer surface and an inner reverse-phase surface, wherein fatty acid residues are bonded through ester linkages to form said inner reverse-phase surface.

The References

Horiuchi et al. (Horiuchi)	3,901,763	Aug. 26, 1975
Ayers et al. (Ayers)	4,330,440	May 18, 1982
Pinkerton et al. (Pinkerton)	4,544,485	Oct. 01, 1985
Shibata et al. (Shibata)	5,041,226	Aug. 20, 1991

Haginaka et al. (Haginaka), "Internal-Surface Reversed-Phase Silica Support for Direct Injection Determination of Drugs in Biological Fluids by Liquid Chromatography", Anal. Chem., Vol. 61, 1989, pages 2445-2448.

Kirk-Othmer Encyclopedia of Chemical Technology (Kirk-Othmer), 3rd. edition, Vol. 9, 1980, pages 291 and 300-302.

The Issue

The issue presented for review is whether the examiner erred in rejecting claims 1 through 5 and 17 through 21 under 35 U.S.C. § 103 as unpatentable over Haginaka in view of Pinkerton, Kirk-Othmer, Ayers, and either Shibata or Horiuchi.

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Discussion

On consideration of the record, including the Appeal Brief, (Paper No. 24), the Examiner's Answer (Paper No. 25), the Supplemental Answer (Paper No. 26), and the above-cited references, it is ordered that the examiner's rejection of claims 1 through 5 and 17 through 21 under 35 U.S.C. § 103 be reversed. In our considered judgment, this rejection relies on the impermissible use of hindsight and cannot stand.

REVERSED

SHERMAN D. WINTERS
Administrative Patent Judge

WILLIAM F. SMITH
Administrative Patent Judge

DOUGLAS W. ROBINSON
Administrative Patent Judge

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Millen, White, Zelano & Branigan
Arlington Clarendon Boulevard
Suite 1400
Arlington, VA 22201