The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SOPHIE CARPENTIER
and ALAIN F. CARPENTIER

Appeal No. 2001-1274
Application No. 08/764,821

ON BRIEF

Before CALVERT, ABRAMS, and NASE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 70 to 92, all the claims remaining in the application.

Claim 70 is illustrative of the subject matter in issue, and reads:

> A method for treating bovine pericardium tissue or porcine tissue to inhibit calcification of the tissue following implantation in a mammalian body, the method comprising:
>
> heat treating the tissue prior to implantation for a period of between 4-22 weeks; and
>
> fixing the tissue during the heat treating.

The references applied in the final rejection are:

Nashef et al. (Nashef)	4,786,287	Nov. 22, 1988
Levy et al. (Levy)	5,674,298	Oct. 07, 1997

The appealed claims stand finally rejected under 35 U.S.C. § 103(a) on the following grounds:

(1) Claims 70 to 80, 82 and 84 to 91, unpatentable over Levy;

(2) Claims 81, 83 and 92, unpatentable over Levy in view of Nashef.

Appellants have not raised the question of whether the Levy patent is a proper reference against them. Nevertheless, the rejections in issue cannot be sustained, because Levy is not a valid reference against appellants under 35 U.S.C. § 102/§ 103. The instant application was filed under 37 CFR § 1.60 as a divisional application of Application No.08/282,358, filed on July 29, 1994.[1] Since this date antedates the effective filing date of the Levy patent, Oct.21, 1994, Levy does not constitute prior art against appellants in the present case.

[1]We note that although the filing request filed with the present application requested in part 5 that the specification be amended to insert a reference to the parent application, no such amendment has been entered.

Conclusion

The examiner's decision to reject claims 70 to 92 is reversed.

REVERSED

IAN A. CALVERT Administrative Patent Judge	)	
NEAL E. ABRAMS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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REVERSED

Prepared: September 25, 2003