Paper No. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SOURAV K. KUNDU
and TED S. GEISELMAN

Appeal No. 2001-1715
Application No. 08/730,892

HEARD: May 08, 2003

Before WALTZ, TIMM, and JEFFREY T. SMITH, ***Administrative Patent Judges***.

JEFFREY T. SMITH, ***Administrative Patent Judge.***

DECISION ON APPEAL

Applicants appeal the decision of the Primary Examiner finally rejecting claims 1-3, 5-11 and 19-24, all of the pending claims.[1] We have jurisdiction under 35 U.S.C. § 134.

[1] In rendering our decision, we have considered Appellants' arguments presented in the Brief, filed May 3, 2000 and the Reply Brief, filed September 14, 2000.

BACKGROUND

According to Appellants, the invention relates to bioactive porous partition members useful in an assay system. Specifically, the invention is directed to an assay system for testing the coagulation function of blood including platelet aggregation. (Brief, p. 2). Claim 1, which is representative of the claimed invention, appears below:

> 1. A porous partition member, wherein the porous partition member comprises a porous material having an aperture and having incorporated and dried therein at least one agent capable of initiating the blood coagulation process or platelet aggregation in blood.

CITED PRIOR ART

As evidence of unpatentability, the Examiner relies on the following references:

Przybylowicz et al. (Przybylowicz)	3,992,158	Nov. 16, 1976
von der Goltz	5,051,239	Sep. 24, 1991

The Examiner has rejected claims 1-3, 5-11 and 19-24 as unpatentable under 35 U.S.C. § 103(a) as obvious over the combination of von der Goltz and Przybylowicz. (Answer, p. 4).

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellants concerning the above-noted rejection, we refer to the Answer and the Briefs.

DISCUSSION

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner in the Answer and Appellants in the Brief and Reply Brief, in support of their respective positions. This review leads us to conclude that the Examiner's § 103 rejection is not well founded. ***See In re Oetiker***, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); ***In re Piasecki,*** 745 F.2d 1468, 1471-1472, 223 USPQ 785, 787-788 (Fed. Cir. 1984).

Von der Goltz describes a flow device for use in a hemorrhaging time measuring apparatus. The device is an apparatus that comprises a housing through which the blood to be tested flows under a suction effect. In a preferred embodiment, at least one aperture is provided in a partitioning or separating wall which defines a cavity into which the suction tube projects. The porous member may be permeated and/or coated with collagen. Von der Goltz also discloses that the porous member can be coated with agents that induce thrombocyte aggregation, including adenosine diphosphate (ADP), or a thrombocyte-activating agent phospholipid such as PAF. Von der Goltz does not specify whether the separating wall is coated prior to use or whether the separating wall is embedded with the chemical reagent.

The Examiner relies on Przybylowicz to provide motivation to embed the separating wall with chemical reagents. Specifically, the Examiner relies on Przybylowicz for teaching

dry chemical analysis techniques as alternative to solution chemical analysis techniques. (Answer, p. 4). Przybylowicz describes diagnostic quantitative chemical analysis of biological liquids including body fluids such as blood, plasma and urine. (Col. 1). The diagnostic element includes a spreading layer and a reagent layer. The particular interactive materials that may be distributed within a reagent layer will depend on the analysis of choice. Przybylowicz also discloses that the reagent could also be placed in the spreading layer for direct analysis in the absence of a reagent layer. (Col. 9). Examples of the diagnostic elements include pH test strips and similar indicators wherein the paper responds to contact with test liquid and either generates color or changes color.

The claimed invention is directed to a porous partition that comprises a porous material having an aperture and having incorporated and dried therein at least one agent capable of initiating the blood coagulation. The claimed partition member is similar to the separating member of von der Goltz. The separating member of von der Goltz is not described as having incorporated therein at least one dried agent capable of initiating the blood coagulation. It appears the Examiner has over generalized Przybylowicz's description of dry chemical analysis versus solution chemical analysis. The Examiner has not adequately explained or identified evidence that a person of ordinary skill in the art would have reasonably expected that the method of analysis described by Przybylowicz would

apply to agents capable of initiating the blood coagulation. The mere fact that the prior art could be modified as proposed by the Examiner is not sufficient to establish a ***prima facie*** case of obviousness. ***See In re Fritch***, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

Since we reverse for the lack of the presentation of a ***prima facie*** case of obviousness by the Examiner, we need not reach the issue of the sufficiency of the evidence as allegedly demonstrating unexpected results. ***See In re Geiger,*** 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

CONCLUSION

The Examiner's rejections of claims 1-3, 5-11 and 19-24 as unpatentable under 35 U.S.C. § 103(a) as obvious over the combination of von der Goltz and Przybylowicz is reversed.

REVERSED

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	)	
THOMAS A. WALTZ	)	
Administrative Patent Judge	)	
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	)	
	)	**BOARD OF PATENT**
CATHERINE TIMM	)	**APPEALS**
Administrative Patent Judge	)	**AND**
	)	**INTERFERENCES**
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JEFFREY T. SMITH	)	
Administrative Patent Judge	)	

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