

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte  
Pablo Lapuerta  
and Michael Gold

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Appeal No. 2003-1745  
Application No. 09/859,614

**ON BRIEF**

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Before WILLIAM F. SMITH, LIEBERMAN, and SCHEINER, Administrative Patent Judges.  
LIEBERMAN, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 13 through 16, which are all the claims pending in this application.



Claims 13 through 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Robl in view of Lis and Wyss.

### **OPINION**

We have carefully considered all of the arguments advanced by the appellants and the examiner and agree with the examiner for the reasons stated in the Answer and those set forth herein that the rejection of claims 13 through 16 under 35 U.S.C. § 103(a) is well founded. Accordingly, we affirm the rejection.

As an initial matter, it is the appellants' position that, "[a]ll of claims 13 to 16 stand together." See Brief, page 2. Accordingly, we select claim 13, the sole independent claim as representative of the claimed subject matter and limit our consideration thereto. See 37 CFR §1.192(c)(7)(2002).

#### The Rejection under § 103(a)

There is no dispute that the primary reference to Robl discloses omapatrilat which is both an angiotensin converting enzyme, ACE inhibitor, and an inhibitor of neutral endopeptidase for the treatment of hypertension. See Brief, page 3 and the Office action of June 19, 2002, page 3. The examiner thereafter relies upon the secondary references to Lis and Wyss for their disclosure of a correlation between hypertension and cognitive impairment to show that it would have been obvious to the person having ordinary skill in the art to have utilized omapatrilat for the treatment or prevention of vascular dementia

and preventing cognitive dysfunctions. See Office action of June 19, 2002, at page 4.

We agree.

Lis is directed to a discussion of the relationship between both vascular dementia, cognitive impairment and hypertension. Indeed, treating both elements of cognitive dysfunction and dementia separately required by the claimed subject matter fall within the scope of the teachings of Lis. In the abstract Lis states that, “[h]ypertension is thought to be directly associated with vascular dementia and preliminary evidence suggests an association between blood pressure and impairments in cognitive functioning.” In a discussion of the risk factors for dementia, Lis reports on the conclusion reached in another study that, “[h]ypertension is one of the major risk factors for stroke and vascular dementia . . . .” See page 475, left-hand column. Indeed Lis reports that, “[m]ost current literature suggest that hypertension and diabetes seem to be directly associated with vascular dementia . . . .” See page 475, right-hand column. Furthermore, Lis states that, “hypertensives are more susceptible to cerebral ischemia and possibly stroke even during small reductions in cerebral perfusion pressure.” See page 476, right-hand column. We further find that in a discussion of hypertension and cognitive function Lis reports that, “higher blood pressures were reliable predictors of poor performance on tests of memory and abstract reasoning . . . .” See page 477, left-hand column. We find that in discussing the impact of hypertension on both cognitive impairment and vascular dementia Lis states that, “sustained hypertension is inversely related to cognitive functioning and is thought to

be a major risk factor of vascular dementia.” Id. Indeed, we find that, “[h]ypertension is a well established and potentially remediable risk factor for vascular disease.” See page 477, right-hand column. We further find in a discussion of the prevention of vascular dementia that, “[p]reliminary research suggests that if we control and/or prevent the risk factors for stroke, particularly hypertension, we may be able to reduce the incidence of vascular dementia.” Id. Lis further reports on a study by Meyer that, “published results from a longitudinal study suggesting that vascular dementia is preventable by control of hypertension.” Id. We find that, “prevention of hypertension offers promise in terms of reducing the incidence of vascular dementia and related disorders.” Id. Based upon the above findings we conclude that it would have been obvious to the person having ordinary skill in the art to treat and prevent the onset of both dementia and cognitive dysfunction by using one or more pharmaceutical compositions for the treatment of hypertension.

While we acknowledge that Lis is not directed to any specific anti hypertensive pharmaceutical composition, Wyss specifically teaches that, “the angiotensin-converting enzyme inhibitors most consistently lead to cognitive improvement in the overall hypertensive population.” See Abstract. Furthermore, Wyss in reporting on ACE inhibitors states that, “reports suggest that antihypertensive drugs that act by inhibiting ACE may have no adverse effect on cognitive function and may actually improve cognitive performance in some hypertensive individuals.” See the paragraph bridging pages 230 and 231. Based upon the above findings, we conclude that it would have been obvious to the

person having ordinary skill in the art to have preferably utilized ACE inhibitors in the treatment of both elements of cognitive dysfunction and dementia separately required by the claimed subject matter. Accordingly, the use of a specific ACE inhibitor, such as omapatrilat, for the treatment or slowing the progression of dementia, would have been obvious to the person having ordinary skill in the art.

Based upon the above findings and analysis we sustain each of the rejections of claims 13 through 16.

**DECISION**

The rejection of claims 13 through 16 under 35 U.S.C. § 103(a) as being unpatentable over Robl in view of Lis and Wyss is affirmed.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

WILLIAM F. SMITH  
Administrative Patent Judge

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