

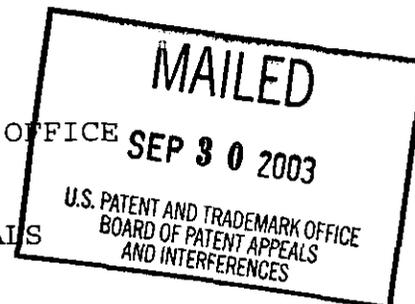
The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 164

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES



JO KLAVENESS, HANNO PRIEBE, PAL RONGVED, and LARS STUBBERUD,  
Senior Party,<sup>1</sup>

v.

JO KLAVENESS, HANNO PRIEBE, PAL RONGVED, and LARS STUBBERUD,  
Senior Party,<sup>2</sup>

v.

MICHEL SCHNEIDER, FENG YAN, PASCAL GRENIER (deceased,  
by Nadine Garcel, Legal Representative),  
JEROME PUGINIER, and MARIE-BERNADETTE BARRAU,  
Junior Party.<sup>3</sup>

Patent Interference No. 104,154

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<sup>1</sup> U.S. Patent 5,536,490, issued July 16, 1996, based on Application 08/119,217, a 35 U.S.C. § 371 national stage application based on PCT/EP92/00715, filed March 28, 1992. According to PTO records, assigned to Nycomed Imaging A/S. Accorded the benefit as to Count 1 of PCT/EP92/00715 in the declaration notice

<sup>2</sup> U.S. Patent 5,567,413, issued October 22, 1996, based on Application 08/466,615, filed June 6, 1995, a division of Application 08/119,217, which is a 35 U.S.C. § 371 national stage application based on PCT/EP92/00715, filed March 28, 1992. According to PTO records, assigned to Nycomed Imaging A/S. In the declaration notice, accorded the benefit as to Count 1 of: Application 08/119,217 and PCT Application PCT/EP92/00715, filed March 28, 1992.

<sup>3</sup> Application 08/893,371, filed July 15, 1997. Unassigned. In the declaration notice, accorded the benefit as to Count 1 of: Application 08/853,936, filed May 9, 1997; Application 08/456,385, filed June 1, 1995, issued as Patent 5,658,551 on August 19, 1997; Application 08/315,347, filed September 30, 1994, issued as Patent 5,531,980 on July 2, 1996; Application 08/128,540, filed September 29, 1993, issued as Patent 5,380,519 on January 10, 1995; Application 07/775,989, filed November 20, 1991, issued as Patent 5,271,928 on December 21, 1993; PCT Application PCT/EP91/00620, filed April 2, 1991; and EP Application 90810262.7, filed April 2, 1990.

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REDECLARATION AND JUDGMENT

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Before WILLIAM SMITH, PATE and MARTIN, Administrative Patent Judges.

Martin, Administrative Patent Judge.

On September 30, 2003, the parties filed a Joint Statement on Termination of Interference" requesting that the interference be terminated "pursuant to the findings and rulings set forth in the Decision on Motions; Show Cause Order, issued January 31, 2003."

In accordance with pages 49-52 of the decision, the interference is hereby redeclared by adding Klaveness et al. ("Klaveness") Reissue Application 09/227,410 to the interference and designating claims 50 and 55 thereof as corresponding to Count 1, the sole count, which reads:

Count 1

Microbubbles comprising an amphiphilic phospholipid material capable of formation of gas containing microbubbles, said microbubbles comprising a physiologically acceptable fluorine-containing gas;

or

a process of preparing a contrast agent comprising generating said microbubbles.

In accordance with paragraph (a) of the show cause order, which appears at pages 55-56 of the decision, judgment on the issue of priority as to the subject matter of Count 1 is hereby entered against the Klaveness et al. ("Klaveness") claims which correspond to Count 1 (i.e., claims 3-8, 17, 19, 20, 29-32, and 38 of the Klaveness '490 patent, claims 3-10, 19, 20, 23, 24, 33-37, and 44 Klaveness '413 patent; and claims 50 and 55 of Klaveness reissue application 09/227,410) and in favor of the Schneider et al. ("Schneider") claims that correspond to Count 1 (i.e., application claims 57-75 and 80).

In accordance with paragraph (b) of the show cause order, judgment is hereby entered against claims 3-8, 17, 19, 20, 29-32, and 38 of the '490 patent and claims 3-10, 19, 20, 23, 24, 33-37, and 44 of the '413 patent for failing to satisfy the written description requirement of 35 U.S.C. § 112, ¶ 1. In addition, judgment is entered against Schneider's claims 57, 60-62, 65, 66, and 69-75 for unpatentability under the written description requirement of 35 U.S.C. § 112, ¶ 1 and against Schneider's claims 58, 59, 63, 64, 67, 68, and 80 for indefiniteness under 35 U.S.C. § 112, ¶ 2.

Neither party is entitled to a patent containing any of its claims which correspond to Count 1.

*William F. Smith*  
WILLIAM F. SMITH )  
Administrative Patent Judge )

*William F. Pate III*  
WILLIAM F. PATE III )  
Administrative Patent Judge )

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

*John C. Martin*  
JOHN C. MARTIN )  
Administrative Patent Judge )

Interference No. 104,154

cc:

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