

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK E. KNUTH and OM P. SAHAI

Appeal No. 94-4497
Application 07/913,782¹

ON BRIEF

Before GARRIS, WEIFFENBACH and ELLIS, Administrative Patent Judges.

WEIFFENBACH, Administrative Patent Judge.

DECISION ON APPEAL

¹Application for patent filed July 14, 1992. According to appellants, this application is a continuation of Application 07/635,461 filed February 1, 1991, now abandoned, which is a division of Application 07/221,951 filed July 22, 1988, now U.S. Patent No. 5,068,184 issued November 26, 1991, which is a continuation-in-part of Application 07/078,745 filed July 28, 1987, now abandoned.

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This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 35-51, which are all of the claims remaining in the application. We have reviewed the record before us. Our review leads us to conclude that the examiner's rejection of all of the appealed claims under 35 U.S.C. § 103 over Merory ("Food Flavorings," 1960, Avi, Westport, CT, pages 132-151) and Winton et al. ("The Structure and Composition of Foods," Vol. IV, 1939, John Wiley & Sons, Inc, New York, pages 308-319) is not well taken. Accordingly, we will not sustain this rejection for essentially those reasons expressed in appellants' Appeal Brief.

The claimed subject matter is directed to a vanilla flavor composition comprising a vanilla cell culture extract containing vanillin and a lower amount of a first set of vanilla flavor components than is present in a natural vanilla extract and a large amount of a second set of vanilla flavor components than is present in a natural vanilla extract. The examiner's position is that the claimed composition "is, at best, a mimic of the flavors of the prior art, and the claims do not define patentably new products" (Answer, page 3). We disagree.

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While the prior art relied upon by the examiner discusses natural vanilla extract, it is not directed to the claimed cultured vanilla cell extract having a composition different from natural vanilla extract, i.e., because the starting material (vanilla bean) and the extraction procedure (using alcohol) disclosed in the applied prior art differs from the starting material (a secreted product from a vanilla plant cell culture) and the extraction procedure (contacting culture medium with an adsorbent) of the present invention.

Accordingly, we find no basis for the examiner's conclusion that the prior art composition "mimics" the claimed subject matter. See Figures 3A and 3B. In addition, the examiner has failed to provide any analysis of the prior art references which would have led a person having ordinary skill in the art to the claimed subject matter, i.e. a composition wherein the amounts of the first and second sets of vanilla flavor components present in the extract are different from that of a natural vanilla extract. In re Brouwer, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1996); In re Ochiai, 71 F.3d 1565, 1570, 37 USPQ2d 1127, 1131 (Fed. Cir. 1995).

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For the foregoing reasons, the examiner has not met his burden of establishing a prima facie case of obviousness over the cited prior art. In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); In re Piasecki, 745 F.2d 1468, 1471-1473, 223 USPQ 785, 787-788 (Fed. Cir. 1984). Accordingly, the decision of the examiner is reversed.

REVERSED

	BRADLEY R. GARRIS)	
	Administrative Patent Judge))	
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)	
	CAMERON WEIFFENBACH)	BOARD OF
PATENT	Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
)	
)	
	JOAN ELLIS)	
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