

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT T. DORR and DAVID S. ALBERTS

Appeal No. 95-0368
Application No. 07/973,211¹

ON BRIEF

Before WINTERS, WILLIAM F. SMITH and JOHN D. SMITH,
Administrative Patent Judges.

WINTERS, Administrative Patent Judge.

DECISION ON APPEAL

This appeal was taken from the examiner's decision rejecting claims 9 through 12. Claims 1 through 8 and 13 through 15, which are the only other claims remaining in the application, stand

¹ Application for patent filed November 6, 1992. According to appellants, this application is a continuation of Application No. 07/788,157, filed November 6, 1991, now abandoned; which is a continuation-in-part of Application No. 07/715,722, filed June 14, 1991, now abandoned; which is a continuation of Application No. 07/377,062, filed July 10, 1989, now abandoned; which is a continuation-in-part of Application No. 07/344,213, filed April 27, 1989, now abandoned.

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withdrawn from further consideration by the examiner as directed to a non-elected invention.

REPRESENTATIVE CLAIM

Claim 9, which is illustrative of the subject matter on appeal, reads as follows:

9. A kit for deactivating HIV infected blood and for deactivating and decolorizing an anticancer drug, said kit comprising:

(a) a first absorbent, fibrous towelette impregnated with an aqueous solution containing 4-40% by weight of either calcium hypochlorite or sodium hypochlorite; and

(b) a second absorbent, fibrous towelette impregnated with an aqueous solution containing 4-40% by weight sodium thiosulfate.

THE REFERENCES

The prior art references relied on by the examiner are:

Kim	4,814,335	Mar. 21, 1989 (filed June 23, 1987)
Itagaki et al. (Itagaki)	4,976,921	Dec. 11, 1990 (filed Dec. 13, 1988)
McClendon	4,998,984	Mar. 12, 1991 (filed Nov. 15, 1989)
Bargery et al. (Bargery)	5,006,339	Apr. 9, 1991 (filed July 19, 1989)
Lister	5,087,450	Feb. 11, 1992 (filed Apr. 4, 1990)

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THE ISSUES

The issues presented for review are: (1) whether the examiner erred in rejecting claims 9 through 12 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Bargery, Kim and Itagaki; and (2) whether the examiner erred in rejecting claims 9 through 12 under 35 U.S.C. § 103 as unpatentable over Lister or McClendon, either of those "primary" references in combination with Itagaki.

DELIBERATIONS

Our deliberations in this matter have included evaluation and review of the following materials: (1) the instant specification, including all of the claims on appeal; (2) appellants' Appeal Brief; (3) the Examiner's Answer; and (4) the above-cited prior art references.

On consideration of the record, including the above-listed materials, we reverse both prior art rejections.

DISCUSSION

Respecting both prior art rejections, the pivotal question is whether it would have been obvious, at the time the invention was made, to provide a kit which contains

(b) a second absorbent, fibrous towelette impregnated with an aqueous solution containing 4-40% by weight sodium thiosulfate.

We answer that question in the negative.

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Appellants provide a reason to use the second towelette, which is impregnated with sodium thiosulfate. See the following description in the specification, paragraph bridging pages 2 and 3:

In a second embodiment of the present invention, spills or leaks of HIV infected blood and/or anticancer drugs on stainless steel or ceramic work surfaces vulnerable to etching by the corrosive alkaline sodium or calcium hypochlorite solutions are inactivated with a two-step, towelette swabbing kit and process. A first absorbent, fibrous (preferably cotton and/or synthetic blend) towelette, impregnated with calcium hypochlorite or, preferably, sodium hypo-chlorite, is swabbed over the spilled HIV infected blood- or drug-containing work surface to deactivate the spilled compound. A second absorbent, fibrous (preferably cotton and/or synthetic blend) towelette, impregnated with sodium thiosulfate, is then swabbed over the spilled HIV infected blood- or drug-containing work surface to neutralize the alkaline calcium or sodium hypochlorite residue from the first towelette, so as to prevent the alkaline residue from corroding or etching the work surface. [Emphasis added.]

Likewise, see the specification, paragraph bridging pages 6 and 7, explaining that the second towelette, impregnated with sodium thiosulfate, is used

[T]o neutralize the alkaline calcium or sodium hypo-chlorite residue from the first towelette, so as to prevent the alkaline residue from corroding or etching the work surface.

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The cited prior art, however, provides no reason, suggestion or motivation to provide a kit containing the second towelette impregnated with sodium thiosulfate. On the contrary, Bargery discloses that after using the anti-viral wipe of his invention, "subsequently any residues were mopped up." See Bargery, column 5, lines 15 and 16. Lister discloses that his virucidal wipe may be used to remove organic materials from counter tops, walls, floors, and instruments "not corroded by sodium hypochlorite." See Lister, column 3, lines 34 and 35. Itagaki discloses that sodium thiosulfate is a reducing agent, and the second essential component of a kit, but that disclosure must be viewed in the context of a "kit for contact lens sterilization and method for contact lens sterilization." On this record, the examiner provides no reason or suggestion why a person having ordinary skill in the art would have modified Itagaki's kit by using towelettes therein. The function of Itagaki's sodium thiosulfate is "to make nontoxic the oxidizing agent still remaining after sterilization" (column 2, lines 59 and 60) so that a contact lens may be worn safely with no damage to the eye. The examiner does not adequately explain how or why that disclosure would have led a person having ordinary skill in the art to modify any of the "primary" references in this case, to arrive at a kit containing a second towelette impregnated with sodium thiosulfate.

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The examiner's decision is reversed.

REVERSED

SHERMAN D. WINTERS)	
Administrative Patent Judge)	
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WILLIAM F. SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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JOHN D. SMITH)	
Administrative Patent Judge)	

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