

**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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte RICHARD R. OLLMANN JR.

---

Appeal No. 95-0266  
Application 07/851,517<sup>1</sup>

---

ON BRIEF

---

Before JOHN D. SMITH, GARRIS and WEIFFENBACH, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on an appeal from the final rejection of claims 1, 6, 10 and 11. The only other claims in the application, which are claims 2 through 5, 7 through 9, and 12, stand withdrawn from further consideration by the examiner as being directed to nonelected inventions.

---

<sup>1</sup> Application for patent filed March 16, 1992.

Appeal No. 95-0266  
Application 07/851,517

The subject matter on appeal relates to a class of compounds which are precursors of rigidified dyes. This appealed subject matter is adequately illustrated by independent claim 1, a copy of which taken from the appellant's brief is appended to this decision.

No prior art has been relied upon by the examiner in the sole rejection before us on this appeal.

The appealed claims stand rejected under the first paragraph of 35 U.S.C. § 112 as being based upon a disclosure which would not enable one having ordinary skill in the art to make the here claimed compounds. On page 3 of the answer, the examiner expresses his position as follows:

Save for specific Examples 3-7, there is no indication as to how the myriad of compounds claimed are to be made. Additionally, there is no indication at all for the source of the necessary starting materials needed to make the myriad of compounds claimed (particularly the various compounds as are identified by variables  $R^1$ ,  $R^5$ , and  $R^4$  taken together with another variable).

We cannot sustain this rejection.

As correctly argued by the appellant, the PTO's burden of proof in questioning the enablement of an applicant's disclosure requires that the PTO advance acceptable reasoning inconsistent with enablement. In re Strahilevitz, 668 F.2d 1229, 1232, 212 USPQ 561, 563 (CCPA 1982). In this case, the examiner has

Appeal No. 95-0266  
Application 07/851,517

proffered no evidence or reasoning adequate to support his doubt that one having ordinary skill in this art would not be capable of purchasing or synthesizing the starting materials needed to form the here claimed precursors, including those having the R<sup>1</sup>, R<sup>4</sup> and R<sup>5</sup> substituents, defined by appealed claim 1. It follows that, on the record before us, there is no reason to doubt the objective truth of the statements contained in the appellant's specification disclosure which must be relied on for enabling support of the here claimed invention. In re Marzocchi, 439 F.2d 220, 223, 169 USPQ 367, 369 (CCPA 1971).

Appeal No. 95-0266  
Application 07/851,517

In light of the foregoing, the examiner's decision to reject claims 1, 6, 10 and 11 under the first paragraph of 35 U.S.C. § 112 is reversed.

**REVERSED**

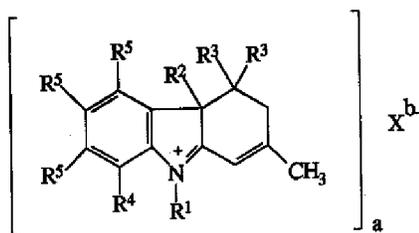
JOHN D. SMITH	)	
Administrative Patent Judge)	)	
	)	
	)	
BRADLEY R. GARRIS	)	BOARD OF PATENT
Administrative Patent Judge)	)	APPEALS AND
	)	INTERFERENCES
	)	
CAMERON WEIFFENBACH	)	
Administrative Patent Judge)	)	

Appeal No. 95-0266  
Application 07/851,517

Mark A. Litman  
3M Office of Intellectual Property Counsel  
P.O. Box 33427  
St. Paul, MN 55133-3427

APPENDIX

1. A compound of the formula:



wherein  $R^1$  represents an alkyl, aryl, sulfoalkyl, carboxyalkyl, sulfatoalkyl, alkoxyalkyl, acyloxyalkyl, dialkylaminoalkylene, cycloaminoalkylene, acyl, or alkenyl group having up to 18 carbon atoms;  $R^2$  represents an alkyl group having from 1 to 18 carbon atoms;  $R^3$  represents hydrogen or an alkyl group having from 1 to 18 carbon atoms;  $R^4$  represents hydrogen or an alkyl group having from 1 to 18 carbon atoms;  $R^5$  represents hydrogen, nitro, carboxyl, sulfo, hydroxy, halogen, phospho, or an alkoxy, thioalkoxy, oxyalkyl, acyl, alkyl, aryl, or amino group having up to 18 carbon atoms; wherein any two groups  $R^5$ , or  $R^4$  and a group  $R^5$ , or  $R^1$  and  $R^4$  may together form a substituted or unsubstituted aryl, heteroaryl, aliphatic, or heteroaliphatic ring;  $X$  represents any non-interfering anion; and  $a$  and  $b$  represent positive integers such that  $a$  equals  $b$ .