

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YUKIO INABA, YOHSUKE UENO,
TAKAYUKI TSUJINO AND TOHRU MURAKAMI

Appeal No. 96-0159
Application 07/946,595¹

ON BRIEF

Before GOLDSTEIN, JOHN D. SMITH, and WEIFFENBACH, *Administrative Patent Judges*.

GOLDSTEIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the examiner's final rejection of claims 1 to 12. There are no allowed claims. Illustrative claim 1 is reproduced below.

¹ Application for patent filed September 18, 1992.

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PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 96-0159
Application 07/946,595

1. A process for purifying a hydrogen peroxide aqueous solution, which comprises bringing a hydrogen peroxide aqueous solution containing 50 to 10,000 ppm of a phosphoric acid component obtained by extracting with water a reaction mixture containing hydrogen peroxide formed by an oxidation-reduction process of anthraquinones, into contact with active alumina particles containing 90 % or more of an alumina component in terms of Al_2O_3 and having a specific surface area of 100 to 600 m^2/g at a temperature of 0 to 50°C for 6 to 500 minutes to remove the phosphoric acid component from the hydrogen peroxide aqueous solution.

The sole reference relied on by the examiner on appeal is:

FMC Corp. (French) 1,581,200 Aug. 8, 1968

A newly cited publication which shall be discussed in the following opinion is:

Kirk-Othmer, "Encyclopedia Of Chemical Technology", Third Edition, Volume 13, pages 16-17 (1981)

Claims 1 to 12 have been finally rejected under 35 U.S.C. § 103 as being unpatentable over the FMC French patent publication. The examiner has actually made two separate rejections, one being based on the patent in view of its abstract and the other being based on the abstract in view of the entire patent. These variations in exposition are of no significance in this case.

Appellants' claims are drawn to a process of purifying hydrogen peroxide which contains phosphoric acid by treatment with active alumina particles to remove the phosphoric acid.

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The FMC French patent discloses a process of removing metallic ions from hydrogen peroxide. The only disclosure of phosphoric acid is as a stabilizer which may be added to the purified hydrogen peroxide (page 7). Although appellants' specification acknowledges that in certain instances phosphoric acid is present in hydrogen peroxide formed by oxidation-reduction of anthraquinones (as is the hydrogen peroxide of the present claims and certain of the hydrogen peroxides treated in the FMC patent), there is no indication that the hydrogen peroxide treated in the FMC patent did indeed contain phosphoric acid and the portion we have above alluded to would appear to suggest that phosphoric acid was not present.

We have added to the record the Kirk-Othmer Encyclopedia section disclosing the formation of hydrogen peroxide from anthraquinones, and there is no mention in that disclosure of the use of phosphoric acid. Thus, it can not be assumed that all anthraquinone formed hydrogen peroxide contains phosphoric acid and that appellants' process is simply inherent in the reference process.

For the reasons given above, we conclude that the examiner has failed to make out a prima facie case of obviousness against the appealed claims.

Appeal No. 96-0259
Application 07/946,595

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