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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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FRANK WU, AKINORI KARIYA, NORIYOSHI KATSUYAMA, ATSUSHI TSUJI,  
KIYOSHI TAKASUKA, SHIGENORI SEGAMI, KATSUMI NANJO and JUNKO  
SATO

**Junior Party,<sup>1</sup>**

v.

KOZO SHIOKAWA, SHINICHI TSUBOI, KOICHI MORIYA, YUMI HATTORI,  
IKURO HONDA and KATSUHIKO SHIBUYA

**Senior Party.<sup>2</sup>**

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<sup>1</sup>Application 07/606,848, filed October 31, 1990. Accorded the benefit of Japan - 292675/1989, filed November 10, 1989; 24199/1990, filed February 2, 1990. Assigned to Agro-Kanesho Co., Ltd. of Tokyo, Japan.

<sup>2</sup> U.S. Patent No. 5,032,589, granted July 16, 1991, based on Application 07/487,004, filed March 1, 1990. Accorded the benefit of Japanese Application HEI 1-54943, filed March 9, 1989. Assigned to Nihon Bayer Agrochem K.K., Tokyo, Japan, A Corporation of Japan.

Interference No. 102,802

Patent Interference No. 102,802

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Before METZ, PATE, and HANLON, Administrative Patent Judges.

HANLON, Administrative Patent Judge.

JUDGMENT UNDER 37 CFR § 1.640(e)

Senior party Shiokawa et al. (hereinafter "Shiokawa") has filed a request for entry of judgment in favor of both junior and

senior parties based on no interference-in-fact. See Paper No. 90; see also Paper No. 29 (granting Wu et al. motion under 37 CFR

§ 1.633(b) for judgment on the ground of no interference-in-fact). Junior party Wu et al. (hereinafter "Wu") has joined in that request. See Paper No. 92.

However, subsequent to Shiokawa's request and Wu's joinder therein, the following motions relating to inventorship were filed for the first time in this interference:

(1) Shiokawa's motion under 37 CFR § 1.634 to correct inventorship (Paper No. 92½). Opposition filed by Wu (Paper No. 93). Reply (Paper No. 99).

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(2) Wu's motion under 37 CFR § 1.635 for leave to file a belated motion under 37 CFR § 1.633(a)/35 U.S.C. § 102(f) (Paper No. 94). Opposition filed by Shiokawa (Paper No. 97). Reply (Paper No. 100).

(3) Wu's belated motion under 37 CFR § 1.633(a)/35 U.S.C. § 102(f) (Paper No. 95). Opposition filed by Shiokawa (Paper No. 98). Reply (Paper No. 101).

At the time senior party Shiokawa filed its request for judgment and junior party Wu joined in that request, a case and controversy no longer existed in this interference. Therefore, Shiokawa's subsequently filed motion under 37 CFR § 1.634 did not fairly place the issue of inventorship in the interference where the sole matter remaining in this proceeding was the ministerial act of entering judgment. Compare *Schulze v. Green*, 136 F.3d 786, 790, 45 USPQ2d 1769, 1773 (Fed. Cir. 1998) (motion under 37 CFR § 1.634 filed with preliminary statements "fairly placed the issue of the inventorship of Appellants' application in the interference"). For this reason, the above-identified motions are dismissed as untimely filed and the following judgment is hereby entered.

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Judgment

Judgment as to Counts 1 and 2 is awarded in favor of the junior party, Frank Wu, Akinori Kariya, Noriyoshi Katsuyama, Atsushi Tsuji, Kiyoshi Takasuka, Shigenori Segami, Katsumi Nanjo and Junko Sato, based on no interference-in-fact. On the record before the Patent and Trademark Office in this interference, Frank Wu, Akinori Kariya, Noriyoshi Katsuyama, Atsushi Tsuji, Kiyoshi Takasuka, Shigenori Segami, Katsumi Nanjo and Junko Sato are entitled to a patent containing claims 6 and 7 which correspond to Count 1 and claims 30 and 31 which correspond to Count 2.

Judgment as to Counts 1 and 2 is awarded in favor of the senior party, Kozo Shiokawa, Shinichi Tsuboi, Koichi Moriya, Yumi Hattori, Ikuro Honda and Katsuhiko Shibuya, based on no interference-in-fact. On the record before the Patent and Trademark Office in this interference, Kozo Shiokawa, Shinichi Tsuboi, Koichi Moriya, Yumi Hattori, Ikuro Honda and Katsuhiko Shibuya are entitled to their patent containing claims 1-8 which correspond to Count 1 and claim 9 which corresponds to Count 2.

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ANDREW H. METZ	)	
Administrative Patent Judge	)	
	)	
	)	
WILLIAM F. PATE, III	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
ADRIENE LEPIANE HANLON	)	
Administrative Patent Judge	)	

ALH:lp

Interference No. 102,802

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Letty

March 9, 2000

Judge Hanlon

Judge Pate

Judge Metz

JUDGMENT

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