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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ADRIAN MARTIN PILIPONSKY, MINDY TSAI,
and STEPHEN J. GALLI

Appeal 2012-002474
Application 11/875,710
Technology Center 1600

Before DONALD E. ADAMS, DEMETRA J. MILLS,
and STEPHEN WALSH, *Administrative Patent Judges*.

WALSH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the rejection of claims directed to a method for the diagnosis of sepsis. The Patent Examiner rejected the claims for anticipation. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Claims 1, 3, and 4 are on appeal. The claims read:

1. A method for the diagnosis of sepsis, the method comprising:
determining the level of neurotensin in a blood sample from a mammalian patient suspected of having sepsis, wherein elevated levels of neurotensin relative to a normal control is indicative of sepsis.
3. The method according to Claim 1, wherein said patient is a human patient.
4. The method according to Claim 3, wherein said determining step comprises measuring the binding of neurotensin to a neurotensin-specific antibody.

The Examiner rejected claims 1, 3, and 4 under 35 U.S.C. § 102(a) as anticipated by Powell (US 2006/0052278 A1, published March 9, 2006, filed Aug. 18, 2005).

DISCUSSION

Appellants contend that the rejection of claim 4 should be reversed because Powell “fails to disclose the use of an antibody for analysis generically, and fails to disclose the use of an antibody specific for neurotensin specifically, and thus fails to teach every element of the claimed invention, and cannot anticipate the claim.” (App. Br. 2.) We agree. The rejection of claim 4 is therefore reversed.

Appellants argue claims 1 and 3 together, and contend that Powell provided “no indication of any kind which cells or biological samples were tested,” (*id.* at 5), and that Powell did not teach testing blood from a patient suspected of having sepsis. The Examiner found that Powell taught determining the presence of the markers of Table 1, i.e., dozens of

Appeal 2012-002474
Application 11/875,710

substances among which neurotension is listed, by chemical tests of blood. (Ans. 6, citing Powell ¶ [0076].) However, Powell’s ¶ [0076] is directed to diagnosing human dormancy syndrome, and it states that “[p]ertinent historical features include symptoms of . . . septic shock,” among dozens of other conditions. The fact that septic shock may be pertinent to a diagnosis of human dormancy syndrome is not a teaching that a person suspected of having sepsis should be tested for neurotensin levels. We agree with Appellants that Powell did not teach this element of the claims. The rejection of claims 1 and 3 is therefore reversed.

SUMMARY

We reverse the rejection of claims 1, 3, and 4 under 35 U.S.C. § 102(a) as anticipated by Powell.

REVERSED

cdc