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11/816,287	08/15/2007	Renato Ravetti	2005.020 US	7611
210 MERCK P O BOX 2000 RAHWAY, NJ 07065-0907	7590 11/16/2016		EXAMINER RICCI, CRAIG D	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RENATO RAVETTI<sup>1</sup>

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Appeal 2015-007020  
Application 11/816,287  
Technology Center 1600

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Before ERIC B. GRIMES, ULRIKE W. JENKS, and DAVID COTTA,  
*Administrative Patent Judges.*

JENKS, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) involving claims directed to a method of delivering live vaccines to animals. The Examiner rejects the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Claims 9, 21, and 22 are on appeal, and can be found in the Claims Appendix of the Appeal Brief (Br. 11).

The Examiner rejected claims 9, 21, and 22 under 35 U.S.C. § 103(a)

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<sup>1</sup> According to Appellant, the real parties in interest are Intervet International BV (a wholly owned subsidiary of Merck Sharp and Dohme Corp.), and Salmix Industria e Comercio Ltda. (Br. 3.).

as unpatentable over Bernard<sup>2</sup> in view of Saif<sup>3</sup> and Peterka<sup>4</sup>.

Upon consideration of the evidence on this record and each of Appellant's contentions, we find that the preponderance of evidence on this record supports the Examiner's conclusions that the subject matter of Appellant's claims 9, 21, and 22 is unpatentable over the combination of Bernard, Saif, and Peterka. Accordingly, we affirm the Examiner's rejections of each of these claims for the reasons set forth in the Final Action<sup>5</sup> and Answer (Final Act. 2–9 and Ans. 3–8) which we incorporate herein by reference.

For emphasis only, we provide the following: Although not in the same field of endeavor as the claimed invention Peterka is still analogous art, as it is reasonably pertinent to the particular problem with which the inventor is involved, *i.e.*, dechlorinating water in order to stabilize the active vaccine ingredient for the administration to an animal. *See In re Clay*, 966 F.2d 656, 658–659 (Fed. Cir. 1992). A person of ordinary skill in the art seeking to dechlorinate water for the purpose of administering a vaccine in a water source would naturally look to any means of dechlorinating water that does not produce byproducts that could potentially be detrimental to animal

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<sup>2</sup> WO 01/26622 A1 published Apr. 19, 2001 (“Bernard”). Because the WIPO document is not available the Examiner relies on the machine translation of the priority document FR 2001/2799651 both of record (*see* form 892 mailed Jan. 17, 2014) (Final Act. 2–3). Appellant also cites to the machine translation (Appeal Br. 6).

<sup>3</sup> Y. M. Saif, *Diseases of Poultry*, 11<sup>th</sup> edition, page 25 (2003).

<sup>4</sup> Greg Peterka, *The Endangered Species Act and Chlorinated Water Discharges*, RESEARCH AND EXTENSION WATER QUALITY CONFERENCE 2002.

<sup>5</sup> Final Office Action mailed May 30, 2014 (“Final Act.”).

welfare. See *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1380 (Fed. Cir. 2007) (“[A]n inventor considering a hinge and latch mechanism for portable computers would naturally look to references employing other ‘ housings, hinges, latches, springs, etc.,’” from areas outside the inventor’s field of endeavor.); and *In re Paulsen*, 30 F.3d 1475, 1481 (Fed. Cir. 1994).

Here, Peterka teaches that chlorine needs to be removed from wastewater before it is discharged into streams because “[a]ll forms of chlorine are hazardous to aquatic life even at extremely low levels” (Peterka 1). Peterka recognizes that dechlorinating water has traditionally been achieved using chemical neutralization methods “using ‘good old boy’ sulfur based compounds such as sodium thiosulfate, sodium metabisulfite, sodium bisulfite, sodium sulfite, or sulfur dioxide” (*id.*). The use of any of these sulfur based compounds in the dechlorinating process results in the liberation of sulfites that can be hazardous (*see id.*). It has now been discovered that vitamin C is useful for “performing routine chlorine neutralization within the water and wastewater industry” without negative environmental impact (*id.*). Based on the teachings in Peterka we agree with the Examiner that “a person of ordinary skill in the art would have recognized the interchangeability of the elements and could have substituted one known element for another” even if the benefits of using vitamin C is described with an emphasis on the application in wastewater treatment (Ans. 7).

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TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED