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December 31, 1992

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COPY

Re: YODA - USSN 07/705,211
BLOOD COLLECTING APPARATUS
Your Ref: B7377-01
Our Ref: YODA=1

Gentlemen:

Enclosed herewith is a copy of the Examiner's December 16, 1992, Final Official Action on the above-identified application.

As you will note, we have not made much progress with the Examiner. In fact, the Examiner seems very resistant to allowing this application. This is best observed from his comment that, "Although no single reference combined the various elements in the same manner as Applicant, the combination is still seen as obvious to the Examiner barring some unforeseen new result of combining the various elements".

It is important for you to recognize that under U.S. patent practice, an examiner can, at his discretion, preclude further prosecution of the claims after a final rejection. This permits an examiner to refuse any amendment of the claims intended to overcome cited prior art, which is generally what should be expected when such amendments are offered.

Given the finality of the Examiner's action, we are left with the usual options:

1) File a response for purpose of putting the claims in better condition for appeal;

2) File a response without amending the claims to overcome the prior art but rebutting the prior art rejection;

3) Refile the application as a continuation with new claims (if necessary) to distinguish the invention from the cited prior art; or

4) Abandon the invention in the U.S.A.

In this case, we have no suggestions on how the claims might be improved to overcome the prior art either in a response or a continuation application. Further, we would need your comments on how to improve the arguments against the cited art made in the last response.

It appears to us that the Examiner is unwilling to allow this case no matter how we proceed. This leaves appeal as the only option available if your client wishes to proceed. It would seem that we may have a good chance of prevailing in an appeal because even the Examiner concedes that there is no teaching of the combination (which he views as obvious). This in our opinion does not overcome his burden of showing a teaching of the combination as required by the case law we cited in our last response.

Prior to proceeding with a formal appeal however, you may wish to consider an interview with the Examiner and his Supervisor in the hope that we could persuade his supervisor that the application is allowable over the cited art.

A shortened statutory period for response has been set to expire in three months, i.e. the last day of the term will be March 16, 1992, unless the term is extended upon petition and payment of an appropriate late fee. As is usual in applications under Final Rejection, we recommend, if you choose to continue, proceeding early to permit negotiation with the Examiner, and avoid late fees after an interview or the March 16, 1992, due date.

Accordingly, please give us your instructions in good time.

A debit memorandum for our services is also enclosed.

Sincerely,

Norman J. Latker
Managing Attorney

NJL:jac
Enclosures
yoda.ltr