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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/009,575	09/18/2009	7560123	024701-000067	1279

68850 7590 10/23/2009

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 10/23/2009

Please find below and/or attached an Office communication concerning this application or proceeding.



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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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***EX PARTE* REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/009,575.

PATENT NO. 7560123.

ART UNIT 3991.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/009,575	Patent Under Reexamination 7560123	
	Examiner BRUCE CAMPELL	Art Unit 3991	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 18 September 2009 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) PTO-892, b) PTO/SB/08, c) Other: _____

1. The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a) by Treasury check or,
b) by credit to Deposit Account No. _____, or
c) by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

/Bruce Campell/ Primary Examiner, Art Unit 3991		
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cc:Requester (if third party requester)

Art Unit: 3991

Request for Ex Parte Reexamination

A request for ex parte reexamination of claims 1-6 of U.S. Patent 7,560,123 was filed September 18, 2009 by a third party requester.

Decision on Request

A substantial new question of patentability (SNQ) affecting claims 1-6 of United States Patent Number 7,560,123 is raised by the request for ex parte reexamination.

Claims

Patent 7,560,123 comprises 6 claims and this Request is directed to claims 1-6. Claims 1 and 4, the independent claims, read as follows:

1. A composition consisting of vitamin A, beta carotene, vitamin B₁, vitamin B₂, vitamin B₃, vitamin B₆, vitamin B₉, vitamin B₁₂, vitamin C, vitamin D₃, vitamin E, iron, magnesium, zinc and one or more pharmaceutically acceptable carriers.
4. A method consisting of administering to a patient the composition of claim 1.

Documents Submitted by Requester

The following documents were submitted by Requester as the basis for this Request.

- (1) Vitafol® PN Product Insert, Everett Laboratories, Inc., REV 4/2002 ("Vitafol").
- (2) U.S. Patent No. 4,752,479 to Briggs et al., issued June 21, 1988.
- (3) U.S. Patent No. 4,994,283 to Mehansho et al., issued February 19, 1991.
- (4) Amine et al., "Effect of Diet on Iron Absorption in Iron-Deficient Rats," *J. Nutr.*, 101,927-936 (1971).

None of these references were considered in the prosecution of the application that matured into the '123 patent.

Requester's Proposed SNQs

Requester considers claims 1-6 unpatentable over **Vitafol**, alone or in combination with any one of **Briggs**, **Mehansho** or **Amine**.

Vitafol is a product insert from a vitamin and mineral supplement marketed by Everett Laboratories, Inc. The annotation "REV 4/2002" is taken to mean that this insert has been used since April, 2002, which makes it available as prior art. Vitafol discloses that the supplement contains all of the active ingredients recited in the claims of the '123 patent, and also contains calcium carbonate.

Briggs teaches that calcium inhibits absorption of iron (provided in supplements) from the gastrointestinal tract.

Mehansho also teaches that calcium carbonate inhibits iron absorption.

Amine studied absorption of dietary iron in rats. It was found that when rats were fed corn containing radioactive iron, addition of a large amount of calcium carbonate to the corn inhibited retention of the iron by the test animals.

There is a substantial likelihood that a reasonable examiner would consider the Vitafol disclosure important in determining whether claims 1-6 are patentable. Accordingly, Vitafol raises a SNQ regarding claims 1-6.

Conclusion

In view of the analysis above, the request for reexamination is **GRANTED**. Claims 1-6 of US Patent 7,560,123 will be reexamined.

Duty to Disclose

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 7,560,123 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Waiver of Right to File Patent Owner Statement

In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The waiver document must contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third party requester (see 37 C.F.R 1.550(f)).

Amendment in Reexamination Proceedings

Patent owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be formally presented pursuant to 37 CFR 1.52(a) and (b), and must contain any fees required by 37 CFR 1.20(c).

Service of Papers

After the filing of a request for reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party (or parties where two or more third party requester proceedings are merged) in the reexamination proceeding in the manner provided in 37 CFR 1.248. See 37 CFR 1.550(f).

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRUCE CAMPELL whose telephone number is 571-

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272-0974. The examiner can normally be reached on Monday - Thursday from 8:00 to 5:00. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones, can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 571-273-9900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

All correspondence relating to this ex parte reexamination proceeding should be directed:

By EFS: Registered users may submit via the electronic filing system EFS-Web at <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>


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