

# Exhibit 5

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

Application of	)	"PRODUCTION OF
FU-KUEN LIN	)	ERYTHROPOIETIN"
Serial No. 675,298	)	Group Art Unit 127
Filed November 30, 1984	)	Examiner: J. Martinell

PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL  
INFRINGEMENT (37 C.F.R. §1.102 & M.P.E.P. §708.02)

Hon. Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Sir:

Applicant, by his undersigned counsel of record, herewith Petitions the Honorable Commissioner for advancement of examination under 37 C.F.R. §1.102 and consistent with the requisites of M.P.E.P. §708.02 II and VIII.

1. Consistent with the provisions of 37 C.F.R. §1.102(d), enclosed herewith is a check in the amount of \$72.00 as the fee required by 37 C.F.R. 1.17(i). The Commissioner is hereby authorized to charge payment of any additional processing fees under 37 C.F.R. §1.17 to Deposit Account No. 13-2855. A duplicate copy of this sheet is attached for this purpose.

2. Consistent with the requisites of M.P.E.P. §708.02 II with respect to 37 C.F.R. §1.102 petitions to make special because of actual infringement, Applicant attaches hereto the Declaration of the undersigned counsel of record to the effect that (1) infringing products are being offered "on the market" and infringing methods of use are being practiced in the United States; (2) certain of the infringing products and practices were first known to exist

70007459

AM 27 008057

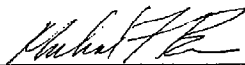
AM-ITC 00447885

by Applicant's assignee as early as January, 1986; (3) a comparison of the claims has been made to information available concerning the infringing products and methods; (4) in counsel's opinion at least some of the claims are unquestionably infringed; (5) a thorough search of the prior art has been made; and (6) in counsel's opinion, all of the claims in the application are allowable.

3. Consistent with the requisites of M.P.E.P. §708.02 VIII, and in view of the fact that the application has not yet received examination, Applicant attaches hereto a Preliminary Amendment whereby a preliminary election of prosecution of certain claims is made without traverse but with a specific reservation of the right to pursue prosecution of the remaining claims by way of continuing application. Associated with said Preliminary Amendment are statements of counsel with respect to a "pre-examination" search of the prior art. Notation of references deemed most closely related to the preliminarily elected claims is made. A discussion of the references in keeping with the requirements of 37 C.F.R. §1.111(b) and (c) is set out in a concurrently filed "Information Disclosure Statement Under 37 C.F.R. §1.197".

Respectfully submitted,

MARSHALL, O'TOOLE, GERSTEIN,  
MURRAY & BICKNELL

By   
Michael F. Borun (Reg. No. 25,447)  
A Member of the Firm  
Attorneys for Applicants  
Two First National Plaza  
Chicago, Illinois 60603  
(312) 346-5750

Chicago, Illinois

April 23, 1986

70007460