

EXHIBIT H-5

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APR 24 1986

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

GROUP 120

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

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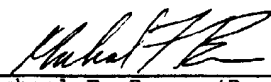
by Applicant's assignee as early as January, 1986; (3) a comparison of the claims has been made to information available concerning the infringing products and methods; (4) in counsel's opinion at least some of the claims are unquestionably infringed; (5) a thorough search of the prior art has been made;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

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MURRAY & BICKNELL

By


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April 23, 1986

TO SEPARATE, IF OF AN TOM EDGES, SNAP-APART AND HARD CARBON

FORM PTO-892 (REV. 3-78)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 561034	GROUP ART UNIT 127	ATTACHMENT TO PAPER NUMBER			
NOTICE OF REFERENCES CITED				APPLICANT(S) Lin					
U.S. PATENT DOCUMENTS									
	DOCUMENT NO.		DATE	NAME	CLASS	SUB-CLASS	FILING DATE IF APPROPRIATE		
A	4463464	5/25/54	Cohen et al	435	317		11/4/75		
B	4503151	3/5/85	Pardeck et	435	68		11/22/52		
C	4465624	5/14/54	Shih et al	260	112 R		5/14/54		
D	4377513	3/22/83	Sugimoto et al	360	113 R		5/11/51		
E									
F									
G									
H									
I									
J									
K									
FOREIGN PATENT DOCUMENTS									
	DOCUMENT NO.		DATE	COUNTRY	NAME	CLASS	SUB-CLASS	PERTINENT SMTS DWG	PP SPEC
L	2055557	6 May 1982	UK	Hayashimura	760	112 R			
M									
N									
O									
P									
Q									
OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)									
R	Lin et al. 1954 "Cloning of the Monkey Erythropoietin Gene" J. Cell Biochem 10(8 Part B) p45 Abstr. #6951								
S	L. Huang. 1954 "Cloning and Expression of human erythropoietin: DNA E. coli." Proc Natl Acad Sci 51 2715-12								
T	Waters et al 1982 "Characterization of a monoclonal antibody to human erythropoietin" Proc Natl Acad Sci 79 5465-69								
U	Kornalik et al 1954 "A Miniaturized Agar Culture System for Cloning Human Erythropoietic Progenitor Cells" Exp Hem 12 75-79								
EXAMINER J. Gresser			DATE 5/20/85						
*A copy of this reference is not being furnished with this office action. (See Manual of Patent Examining Procedure, section 707.05 (a).)									

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Filed November 30, 1984)	Examiner: J. Martinell

REFERENCES CLOSELY RELATED TO THE
SUBJECT MATTER ENCOMPASSED BY THE CLAIMS

PTO-1449 NO. C-31

Farber, Clin.Res., 31(4), 769A (1983)

PTO-1449 NO. C-32

Farber, et al., Exp. Hematol., 11, Supp. 4,
Abstract No. 101 (1983)

PTO-1449 NO. C-33

Farber, et al., Blood, 62, No. 5, Supp. No. 1,
Abstract 392, 1129 (1983)

PTO-1449 NO. C-68

Lee-Huang, Proc. Nat'l. Acad. Sci. (USA), 81,
2708-2712 (1984)

PTO-1449 NO. B-13

Lee Huang, Published PCT Appln. WO85/03079
(7/25/85)

PTO-1449 NO. A-13/B-5

Egrie, Published EPC Application 0116446 (8/22/84)

PTO-1449 NO. C-103

Sue, et al., Proc. Nat'l. Acad. Sci. (USA), 80,
3651-3655 (1983)

PTO-1449 NO. C-106

Sytowski, et al. J. Immunol. Methods, 69, 181-186
(1984)