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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/008,406	02/08/2007	6045834	ALLT.002RX	9822

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/06/2008

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

Office Action in Ex Parte Reexamination	Control No. 90/008,406	Patent Under Reexamination 6045834	
	Examiner Sharon-L. Turner	Art Unit 3991	

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

- a Responsive to the communication(s) filed on 08 November 2007. b This action is made FINAL.
c A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c)**. If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 3. <input type="checkbox"/> Interview Summary, PTO-474. |
| 2. <input checked="" type="checkbox"/> Information Disclosure Statement, PTO/SB/08. | 4. <input checked="" type="checkbox"/> <u>IDS 14 sheets</u> . |

Part II SUMMARY OF ACTION

- 1a. Claims 1-21 are subject to reexamination.
1b. Claims _____ are not subject to reexamination.
2. Claims _____ have been canceled in the present reexamination proceeding.
3. Claims _____ are patentable and/or confirmed.
4. Claims 1-21 are rejected.
5. Claims _____ are objected to.
6. The drawings, filed on _____ are acceptable.
7. The proposed drawing correction, filed on _____ has been (7a) approved (7b) disapproved.
8. Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some* c) None of the certified copies have
1 been received.
2 not been received.
3 been filed in Application No. _____
4 been filed in reexamination Control No. _____
5 been received by the International Bureau in PCT application No. _____
* See the attached detailed Office action for a list of the certified copies not received.
9. Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.
10. Other: _____

cc: Requester (if third party requester)

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Ex Parte Reexamination

1. A third party request for Ex Parte Reexamination of claims 1-21 of U.S. Patent No. 6,045,834 ('834) was received and granted a filing date of 2-08-07.
2. An Order granting reexamination of claims 1-21 of U.S. Patent No. 6,045,834 was mailed 4-17-07.
3. Patent Owner's Statement was received 6-20-07.
4. Third Party Requestor's Reply was received 7-20-07.

Information Disclosure Statement

5. The submissions of 6-20-07, 8-20-07, 9-4-07, 10-31-07 and 11-8-07 have been considered.

Extension of Time

6. Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that ex parte reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in ex parte reexamination proceedings are provided for in 37 CFR 1.550(c).

Priority

7. U.S. Patent No. 6,045,834 was filed 4-16-1999 and issued 4-04-00. The application claimed priority to Provisional application No. 60/082,134 filed 4-17-1998.

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The '834 Patented Claims

8. The '834 patent consists of claims 1-21. Claims 1, 15 and 17 are independent claims. Claims 2, 4, 8, 10, and 12-13 depend from claim 1. Claim 3 depends from claim 2, claim 5 depends from claim 4, claim 6 depends from claim 5, claim 7 depends from claim 6, claim 9 depends from claim 8, claim 11 depends from claim 10 and claim 14 depends from claim 13. Claim 16 depends from claim 15. Claims 18-21 depend from claim 17.

9. Independent claims 1, 15 and 17 are appended below.

1. A composition for binding and thereby inactivating a mycotoxin in an animal feed, comprising a modified yeast cell wall extract and a mineral clay.

15. An animal feed comprising a composition comprised of a modified yeast cell wall extract and a mineral clay in an amount effective to bind and thereby inactivate a mycotoxin present in the animal feed.

17. A method for reducing mycotoxin contamination of an animal consuming a feedstuff, comprising feeding to an animal an effective amount of a composition comprising a modified yeast cell wall extract and a mineral clay thereby binding and inactivating the mycotoxin in the animal feed.

Claim Scope

10. Guidance to a "modified yeast cell wall extract" is provided in the specification of the '834 patent at column 3, line 50-column 4, line 27 including exemplary yeast cells grown in the presence of alcohol (e.g., alcohol shocking) lysis, washing and centrifugation collection of the yeast cell walls (extract).

11. Guidance to "mineral clays" is provided at column 4, lines 28-35 including zeolite, bentonite and aluminosilicate.

Background of the Invention

12. Lyons, 1994, "Biotechnology in the Feed Industry: 1994 and Beyond: A Panorama of techniques, processes and products to address animal production problems today and tomorrow,"

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pp. 1-48 teaches the use of mannan sugars or yeast cell wall material (extract) in animal feeds.

Lyons 1994 describes the century old use of yeast in fermentation processes such as for the making of alcoholic drinks (beer and wine) and in leavening of bread. At page 10 and Figure 4

Lyons 1994 particularly teaches that mannan (mannan sugars or mannanoligosaccharides) constitute approximately 30% of the yeast cell wall. The positive effects of the use of mannan in feeds is noted at pp. 16-20. Accordingly, preparations of mannan or mannan-oligosaccharides are within the recited claim scope of a 'yeast cell wall extract'.

Documents Cited in the Office Action

Linton et al., U.S. Patent No. 4,055,667, October 25, 1977.

Wallace R. J., 1996, "The Mode of Action of Yeast Culture in Modifying Rumen Fermentation," pp. 217-232.

Hamdy M., U.S. Patent 4,929,452, May 29, 1990, "Method for Rapidly Fermenting Alcoholic Beverages."

Lyons, 1994, "Biotechnology in the Feed Industry: 1994 and Beyond: A Panorama of techniques, processes and products to address animal production problems today and tomorrow," pp. 1-48.

Lyons, 1995, "Biotechnology in the Feed industry: A Look Forward and Backward", in *Biotechnology in the Feed Industry: Proceedings of Alltech's Eleventh Annual Symposium*, eds. T.P. Lyons and K. A. Jacques, pp.2-29, Nottingham University Press, Nottingham, UK.

Charmley et al. 1995, "Mycotoxins: Their Origin, Impact and Importance: Insights Into Common Methods of Control and Elimination", In *Biotechnology in the Feed Industry*:

