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From: Harrison Dillon [mailto:hdillon@solazyme.com]
Sent: Friday, April 21, 2006 7:13 PM
To: AB93Comments
Subject: Proposed Rule Changes

Dear Mr. Robert Bahr:

My comments are addressing the proposed rulemaking "Changes to Practice for Continuing Applications, Requests for Continuing Examination and Practice, and Applications Containing Patentably Indistinct Claims" 71 Fed. Reg. 48-61.

The proposed changes to the rules that will limit divisional applications to claiming priority to a single nonprovisional application is a TERRIBLE idea. The frequency with which examiners ignore proper restriction requirement practice results in a large proportion of any company's patent portfolio containing improperly restricted claims. Rather than exert the effort to fight every improper restriction, many companies simply acquiesce in order to expedite prosecution. The result is that every company, particularly in the biotechnology area, has applications that have been improperly restricted. If the proposed rules go into effect on or before May 3, 2006, this will eliminate the possibility of companies obtaining adequate protection for their inventions unless they file a huge number of costly divisional applications in the next two weeks.

The result of these rules going into effect will have a particularly negative effect on the health care options available to US consumers. If companies fail to obtain patent protection of their discoveries because they were not willing to commit to filing a large number of divisional applications before May 3, 2006, the compounds under development will not get turned into drugs. If anyone at the USPTO is under the naïve notion that compounds falling into the public domain due to patent application abandonment (or lack of filing) will expedite their delivery to consumers in the form of FDA-approved drugs, they need to be disabused of this notion. It is not possible to get anyone to fund the development of a drug without patent protection. My guess is that these proposed rules were not developed with the participation of companies and their counsel that understand the actual, practical, real-world effect of implementing these rule changes. I urge you to abandon the attempt to revise this aspect of divisional filing practice.

Best Regards,

Harrison F. Dillon, J.D., Ph.D.
Chief Executive Officer
Solazyme, Inc.
Edison Technology Park
3475-T Edison Way
Menlo Park, CA 94025
P 650-780-4778
F 650-989-6700
www.solazyme.com