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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*:

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Proceedings of Alltech's Eleventh Annual Symposium, eds. T.P. Lyons and K. A. Jacques, pp. 41-63, Nottingham University Press, Nottingham, UK.

Trenholm et al., 1996, "Mycotoxin Binding Agents: An Update on What We Know", in *Biotechnology In the Feed Industry: Proceedings of Alltech's Twelfth Annual Symposium*, eds. T.P. Lyons and K. A. Jacques, pp. 327-349, Nottingham University Press, Nottingham, UK.

Devegowda, 1997, "Mycotoxins in Animal Feed: Novel Biotechnological Solutions", Paper presented at African Lecture Tour (10-15th March, 1997), pp. C000010 (Title page) - C000013 and C000016 - C000017.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-9, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by **Linton** and relying on **Wallace** and **Hamdy** for evidence of inherency.

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Linton teaches animal feed supplements comprising spent brewer's yeast (saccharomyces cerevisiae) preparations with attapulgite clay (hydrous magnesium aluminum silicate) such as Min-u-gel, see **Linton** at columns 3-4, 12-16 and claims 1, 3 and 8. In the same manner as specified within the '834 patent under reexamination, **Linton**'s yeast cells are 'modified' or prepared via growth in aqueous alcohol containing media (as in the making of beer or brewing) followed by acid hydrolysis of cells, see for example column 3, lines 16-39. **Linton** notes that such yeast cell products may be used in either dried form or alternatively may be used in a wet slurry, as preferred by **Linton**, see for example column 2, lines 14-51. Accordingly, the preparation of **Linton** meets the limitations of a composition comprising a modified yeast cell wall extract and a mineral clay as recited in the '834 patented claims.

Regarding claims 2-3, **Wallace** is relied upon to evidence that the spent brewer's yeast of **Linton** is that of *Saccharomyces cerevisiae*, which is the species of yeast used for leavening bread and the production of alcohol in beer, wine and spirits, see particularly p. 218, Yeasts.

Regarding claims 4-5, the spent brewer's yeast is a by-product of the beer making process. Accordingly, the yeast are exposed to alcohol during growth and prior to lysis and extraction which is the process identified within the '834 patent as producing the 'modified yeast cell wall extract'.

Regarding claims 6-7, **Hamdy** is relied upon to evidence well known fermenting procedures for beer, wine and spirits where the yeast is exposed to growth conditions from 5 to about 20% alcohol, see for example columns 3, lines 35-40 and column 4, lines 35-50.

Regarding claims 8-9, **Linton** teaches animal feed compositions of spent brewer's yeast with a mineral clay, particularly attapulgite clay which is a hydrous magnesium aluminum

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silicate such as the material available under the trademark Min-u-gel or Min-u-gel 200, see **Linton** column 3, lines 40-49 and claims 8 and 17.

Regarding claim 12, the feed supplement of **Linton** is noted for feeding ruminant and monogastric animals such as cattle, poultry, hogs, sheep, horses and rabbits, see **Linton** column 1, lines 5-11 and particularly dairy and beef cattle, see column 14, line 58-column 15, line 19.

Regarding claim 15, the **Linton** liquid animal feed supplement may include up to 12.5%, 2-10% or 5-8% yeast and 0.25-7% attapulgite clay by weight of the supplement, see column 3, lines 10-15 and column 4, lines 58-60. This corresponds to a composition with 2.25-19.5% spent brewer's yeast and attapulgite clay in mixture. The '834 patent notes that 'effective amounts' within the context of the claims include concentrations of 0.0125% to 4% by weight.

Accordingly, the **Linton** supplement providing formulations inclusive of from 2.25-19.5% of a spent brewer's yeast slurry and clay mixture, provides an 'effective amount' of a modified yeast cell wall extract and mineral clay as recited in claim 15.

16. Claims 10-11 and 16 are rejected under 35 U.S.C. 102 (b) as being anticipated by **Linton**, or in the alternative, under 35 U.S.C. 103 as obvious over **Linton**.

'834 patented claim 10 is directed to the composition of claim 1, wherein the composition comprises from between about 1% to about 10% of the mineral clay and from between about 90% to about 99% of the yeast cell wall extract whereas claim 11 is directed to about 2 to about 4% mineral clay and about 96% to about 98% yeast cell wall extract. Claim 16 is directed to the animal feed of claim 15, wherein the effective amount of the above composition comprises from between about 0.0125 to between about 4% by weight of the feed.

As in the '834 patent the supplement (yeast and clay) may also be provided to animals in the amount of 2.5 to 20 grams or 10-15 grams per animal per day, see column 5, lines 9-27.

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Linton's supplement formulations comprise essentially a colloidal mixture of spent brewer's yeast and a water dispersible water-binding agent in an aqueous alcoholic medium, see abstract. Linton notes the use of dried brewer's yeast or yeast solubles in feed, see column 2, lines 14-50 (the liquid supplement form is preferred for ease of mixing as compared to dried forms routinely used in the art). The supplement formulation is in the range of 30-50% solids and generally 85% of the solids are dispersed. The dry matter weight comprises up to about 12.5%, 2-10% or 5-8% yeast and may be derived from yeast slurries from 7.5 to 20% yeast by weight, see column 3, lines 5-40. Attapulgitic clay may be added to form 0.25-7% by weight of the supplement, see Linton column 4, lines 15-25 and claim 8. As in Example 1-3, the supplements are mixed with 16% yeast slurry comprising 47.24%, 48.95% and 49.69% weight % and 1% min-u-gel (attapulgitic clay). As in Examples 4-5 the mixed feed supplements comprise yeast (16% dry matter) comprising 69.75-71.75% by weight and 2% by weight min-u-gel. Thus the Linton supplement arrives at a composition wherein about 1 to 10% of the material is mineral clay. The supplement is then fed to livestock (alone or with other grain and hay formulations) to which it is recommended to consume up to 18 lbs, 5-10 lbs, 6-8 lbs or 1-2 lbs per day.

While the preferred form of yeast is in a slurry, Linton notes the art recognized alternative of using dried yeast forms based upon ready availability, see column 1, lines 57-61 and column 2, lines 14-20. Accordingly, in forming the supplement mixture Linton is inclusive of combining dried yeast cell wall extracts with clay prior to suspension as a colloidal mixture. (These are the only two specified ingredients of the supplement, see particularly abstract). Accordingly, in preparation, Linton would routinely provide a dry composition mixture of attapulgitic clay at 1-2 wt % as noted in Examples 1-5 with the remainder of the formulation

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being made up of dried yeast, i.e., where the dry ingredients prior to mixture as a colloidal suspension would comprise 1-10% or 2-4% attapulgite clay and 90-99% or 96-98% yeast cell wall extract. (The yeast and clay may be the only ingredients as the supplement contains essentially yeast and attapulgite clay). Linton's specified dry ingredients prior to their dissolution in a colloidal mixture would thus anticipate claims 10-11.

In the alternative, since the artisan is well versed in providing and mixing both dry and wet forms of ingredients, the artisan would have found it obvious to arrive at a dry matter composition of the specified ingredients with 1-2 wt. % attapulgite clay as exemplified in Examples 1-5 and the remainder of the composition comprised of the only other specified ingredient, 90-99 or 96-98% yeast cell wall extract. Thus Linton's supplement in dry composition form alternatively renders obvious claims 10-11.

Linton teaches addition of the supplement to feeds as noted in the exemplary formulations of Examples 1-3 and 4-5. Formulated in full diets and feeding to livestock is usually in combination with silage or roughage including hay, cracked corn, straw, rolled barley and beet pulp with feeding regimens that may comprise up to 18 lbs, 5-10 lbs, 6-8 lbs, or 1-2 lbs per day supplement, see Linton Examples 1-5 and column 14, line 58-column 15, lines 47.

Accordingly, the artisan is guided to administration of the supplement comprising modified yeast cell wall extract and attapulgite clay wherein the amount in final feed proportions as calculated from the Examples and formulations is about 0.0125 to 4% by weight of the feed. (It is noted that the weight % recited in claim 16 is in reference to the 'effective amount' of claim 15 and not to the specified ratios of yeast cell wall extract to clay as recited for claims 10-11 above.) Thus, Linton anticipates claim 16.

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In the alternative, since the Linton supplement preparation may include other ingredients and/or be fed with other ingredients in a dietary formulation over a specified period of time such as a day, it would have been obvious for the artisan to arrive at a final feed formulation including supplementation with modified yeast cell wall extract and clay supplement in the amounts of about 0.0125 to 4% by weight of the feed. The artisan would arrive at these quantities given the routine feeding options available from Linton to the artisan, see Examples 1-5, and feeding procedures as noted at column 14, line 58-column 15, line 47. Thus, Linton alternatively renders obvious claim 16.

17. Claims 13-14 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Linton** (relying on **Wallace** and **Hamdy** for evidence of inherency) as applied to claims 1-12 and 15-16 above, and further in view of **Lyons 1995**, **Charmley**, and **Trenholm**.

Claims 13-14 recite, "wherein at least a portion of the composition is bound to a mycotoxin from," and, "mycotoxins selected from the group consisting of Aflatoxin, Zearalenone, Vomitoxin, Fumonisin, T2 toxin and Ochratoxin."

However, **Linton** does not teach that the liquid animal feed supplements or feeds mixed with the supplements *necessarily* contain mycotoxins, including the mycotoxins from the list recited in claim 14. Moreover, as the presence of mycotoxins cannot be confirmed from **Linton**, the reference does not *necessarily* teach the compositions wherein at least a portion of the modified yeast cell wall extracts (spent brewer's yeast slurry) is bound to a mycotoxin.

Lyons 1995 teaches the art recognized prevalence of mycotoxins from common molds (fungi) in animal feed products such as grains. **Lyons 1995** also teaches a host of mycotoxin binding agents including silicate (mineral clay), yeast cell wall mannan

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(mannan oligosaccharides), cholestyramine and charcoal that preferentially bind to various mycotoxins including Aflatoxin, Zearalenone and Ochratoxin, see p. 23 and Table 11. In particular modified mannan sugars were successful with aflatoxin and zearalenone as well as mannan oligosaccharides at various pH and concentration levels, see p. 24 and Figure 24. Mannan sugars within the product Graingard were also effective as noted in Figure 23. **Lyons 1995** suggests using this range of binding agents, perhaps in combination, may be useful as a valid antitoxin pack. The reference also teaches other yeast cell and yeast cell extract preparations as additives to animal feeds, particularly Yea-Sacc and Bio-Mos, see pp. 11-13 and 17-19.

Similarly, **Charmley** teaches fungi or mold production of mycotoxins in animal feeds or grains. **Charmley** also recognizes both mineral clays and yeast cell wall materials for removal of mycotoxins including differences in the relative efficacy of each in binding various mycotoxins from animal diets, see particularly pp. 49- 51, Table 2 and Figure 1. The reference also reports the efficacy of various mycotoxin binding agents against certain mycotoxins in feed, see particularly pp. 49-52. The reference particularly notes oil-bleaching clays, bentonites, zeolite and hydrated sodium calcium aluminosilicate, yeast (Yea-Sacc) and yeast cell wall material such as Bio-Mos (mannan). **Charmley** also recognizes that contaminated feeds may contain a variety of the recognized mycotoxins.

Trenholm similar to **Lyons 1995** and **Charmley** also teach mycotoxin binding agents as a mycotoxin binding product to combat the presence of mycotoxins in animal feeds.

Trenholm's teachings include Bio-Mos and Yea-Sacc in addition to mineral clays such as HSCAS, canola bleaching clays, sodium bentonites and synthetic zeolite, see **Trenholm** at pp.

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335-337 and Figure 1. The compounds are recognized for their benefit in animal feed compositions as well as their ability to bind mycotoxins, see pp. 333-337. The different binding agents are noted to be efficacious in binding different mycotoxins in various animal feeds, see particularly p. 335-337. Importantly, **Trenholm** notes that the use of one adsorbent to bind all toxins is not possible. Therefore **Trenholm** teaches that several factors should be considered when formulating a mixture of binding agents (for use together) as a feed additive.

Accordingly, the prior art establishes a host of mycotoxin contaminants that are expected to be found within animal grain feeds, as well as the addition of mineral clays, yeast and modified yeast cell wall extract for binding to these mycotoxin contaminants within feed. Thus, one of skill in the art would be motivated to provide a combination of each of these compositions (recognized for their mycotoxin binding properties) to achieve superior mycotoxin binding efficacy in animal feed compositions. **Lyons 1995, Charmley and Trenholm** also evidence that the artisan would expect the animal feeds to which the **Linton** supplement is provided to contain mycotoxin contaminants. Further, the artisan would expect that the mineral clay and modified yeast cell wall extract (including mannan) within the **Linton** animal feed supplement to be bound to mycotoxins as recited in claims 13-14. Thus, the cumulative references teach, suggest and motivate the artisan to provide the modified yeast cell wall extract and mineral clay composition of **Linton** to animal feeds for the art recognized advantage of removing contaminating mycotoxins.

Claim 17 is drawn to 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 18 is further limited to the effective amounts as recited in claim 16 above. Claim 19 is further limited to the animals as recited in claim 12 above. Claim 20 is further drawn to the mycotoxins recited in claim 14 above and

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claim 21 is further limited to the compositions that is admixed with the animal feed prior to feeding.

As above, **Linton** teaches an animal feed supplement to be added to an animal feed prior to feeding the animal. The composition is consistent with the mineral clay and modified yeast cell wall extract as recited in claims 1-12 and 15-16 as set forth above.

However, as above, **Linton** does not teach the recognition that modified yeast cell wall extract and clay bind mycotoxins in feed to reduce mycotoxin contamination in animals.

Lyons 1995, Charmley and Trenholm are each noted for their teachings which establish that the art recognized the compositions of modified yeast cell wall extract and mineral clay for their mycotoxin binding properties as well as their use in feeds to bind and thereby effectively remove the deleterious effects of mycotoxins in animals when fed contaminated feeds.

Accordingly, the artisan would be motivated to reduce mycotoxin contamination in animals consuming contaminated feeds by providing the composition of **Linton** in mixture with the feed prior to feeding. The artisan would have an expectation of success in removing the mycotoxins by binding given the exemplary teachings of **Lyons 1995, Charmley and Trenholm** of the effectiveness of mineral clay and modified yeast cell wall extract for these uses. Thus, the cumulative teachings render the claimed invention obvious to the artisan at the time of the invention.

Comments Regarding Patent Owner's Statement and Third Party Requestor's Reply

18. Both Patent Owner and Third Party Requestor address the references of **Lyons 1995** and **Trenholm** alone and in combination with **Charmley**. However, the rejections of record as set forth above differ substantially. Particularly, neither **Lyons 1995** nor **Trenholm** are utilized

alone and the combination of each with **Charmley** does not form the same basis for rejection as set forth above.

19. Regarding the **Linton** reference, Patent Owner argues that **Linton**, on point to spent brewer's yeast preparations, does not teach the separation of yeast cell walls from their intracellular components and thus does not disclose an extract as recited. However, the '834 patent does not define the recited extract by specific steps or as the separation of yeast cell walls from their intracellular components. The '834 patent includes within its scope yeast cell wall-derived extract from yeast organisms grown in food-related fermentations with lysis, see column 3, lines 30-column 4, lines 27, particularly column 3, lines 50-59. In the same manner the **Linton** reference teaches yeast cells prepared from a brewer's fermentation process followed by lysis, see particularly **Linton** column 3, lines 16-39. Accordingly, the **Linton** cell wall extract is particularly on point to the separation of yeast cell walls from their intracellular components and is consistent with the recited claim scope.

20. Regarding **Linton** in combination with **Charmley**, **Lyons 1995** and **Trenholm**, Patent Owner appears to argue that as the words "modified" and "extract" are not found in the **Linton** reference, the reference cannot be found to be anticipatory. However, the same word description is not a requirement. A review of the **Linton** reference as above notes the very same procedures of isolation, i.e., isolation of yeast from a fermentation processes followed by lysis to separate extracellular cell wall material and intracellular components. Patent Owner also argues that **Charmley**, **Lyons 1995** and **Trenholm** 'teach away' from using the cell wall products and mineral clays together as each is noted to be efficacious in binding the same mycotoxin. However, a review of the noted charts within the references reveals data supporting binding of

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both the same and different mycotoxins with the different components. Regardless, the references are not found to teach away, but actually suggest the use of the different components together in combination for maximal mycotoxin binding effects.

21. Regarding **Devegoda**, the reference is relevant for its teachings of antifungal agents such as benzoic acid and mannan oligosaccharides in cell wall for counteracting mycotoxicosis in feeds. However, as noted by Patent Owner, the compositions identified only by tradename do not establish, identify or evidence any particular components within the composition. The reference is not currently relied upon either alone or in combination in any rejection of record.

Conclusion

22. Claims 1-21 are rejected.

Duty to Disclose

23. 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. 6,045,834 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.

Service of Papers

24. 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

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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).

Amendment in Reexamination Proceedings

25. 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).

NOTICE RE PATENT OWNER'S CORRESPONDENCE ADDRESS

26. Effective May 16, 2007, 37 CFR 1.33(c) has been revised to provide that: The patent owner's correspondence address for all communications in an *ex parte* reexamination or an *inter partes* reexamination is designated as the correspondence address of the patent.

Revisions and Technical Corrections Affecting Requirements for Ex Parte and Inter Partes Reexamination, 72 FR 18892 (April 16, 2007)(Final Rule)

The correspondence address for any pending reexamination proceeding not having the same correspondence address as that of the patent is, by way of this revision to 37 CFR 1.33(c), automatically changed to that of the patent file as of the effective date.

This change is effective for any reexamination proceeding which is pending before the Office as of May 16, 2007, including the present reexamination proceeding, and to any reexamination proceeding which is filed after that date.

Parties are to take this change into account when filing papers, and direct communications accordingly.

In the event the patent owner's correspondence address listed in the papers (record) for the present proceeding is different from the correspondence address of the patent, it is strongly encouraged that the patent owner affirmatively file a Notification of Change of Correspondence Address in the reexamination proceeding and/or the patent (depending on which address patent owner desires), to conform the address of the proceeding with that of the patent and to clarify the record as to which address should be used for correspondence.

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Telephone Numbers for reexamination inquiries:

Reexamination and Amendment Practice	(571) 272-7703
Central Reexam Unit (CRU)	(571) 272-7705
Reexamination Facsimile Transmission No.	(571) 273-9900

Future Correspondence

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Turner whose telephone number is 571-272-0894. The examiner can normally be reached on Monday through Thursday from 7:00 a.m. to 5:00 p.m. If the attempts to reach the examiner are unsuccessful, the examiner's supervisor, Deborah Jones can be reached by dialing 571-272-1535. The official fax number for the organization where this application 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).

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28. All correspondence relating to this *ex parte* reexamination proceeding should be directed as follows:

By U.S. Postal Service Mail to:

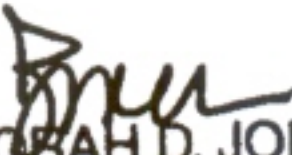
Mail Stop *Ex Parte* Reexam
ATTN: Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX to: (571) 273-9900
Central Reexamination Unit

By hand to: Customer Service Window
Randolph Building
401 Dulany St.
Alexandria, VA 22314

/Sharon L. Turner, Ph.D./
Primary Examiner
Central Reexamination Unit 3991

Conferee:


DEBORAH D. JONES
CRU SPE-AU 3991

Conferee:

/Alan Diamond/
Primary Examiner
Art Unit 3991