

PATENTWATCH

Poster presentation can be printed publication

The US Court of Appeals has upheld the decision of the US Patent and Trademark Office's Board of Patent Appeals and Interferences in denying the October 2000 patent application of Carol Klopfenstein and John Brent for an invention for lowering serum cholesterol levels and raising high-density-lipoprotein-cholesterol levels. The patent was denied, because the invention had already been described in a printed publication more than one year before the date of the patent application, which is one of the bars to issuing a patent.

In October 1998, the inventors, along with another colleague, set up a poster at a meeting of the American Association of Cereal Chemists (AACC), and displayed it continuously for two and a half days. Later that year, the same poster was put on display for less than a day at Kansas State University. On each occasion, the poster disclosed the invention, and there was no disclaimer or

notice to the intended audience prohibiting note-taking or copying of the presentation. As there were no factual disputes between the parties, the issue for the Appellate court was to decide whether the poster constituted a 'printed publication' as a matter of law.

The appellants argued that the poster was not a 'printed publication' because no copies were distributed and there was no evidence that it was photographed. In addition, the poster was never catalogued or indexed in any library or database. However, the Federal Circuit determined that the poster was sufficiently publicly accessible to count as a printed publication: it was shown for an extended period of time to members of the public unskilled in the art, but they were not precluded from taking notes or even photographs of the poster. In addition, copying the information on the poster would have been a relatively simple task, particularly given the amount of time available and the lack of any restrictions on their copying of the information.

In re Klopfenstein and Brent:
<http://www.fedcir.gov/opinions/03-1583.doc>

