

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL HOJJATIE,  
HARRY CHARLES KOMINSKI, III,  
and DEAN ABRAMS

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Appeal 2006-2185  
Application 10/248,892  
Technology Center 1700

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Decided: February 13, 2007

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Before PETER F. KRATZ, CATHERINE Q. TIMM, and  
JEFFREY T. SMITH, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

REQUEST FOR REHEARING

Appellants request rehearing of the Decision mailed September 28, 2006. That Decision sustained the Examiner's rejection of claims 1-3 and

5-11 under 35 U.S.C. § 103(a) as being unpatentable over Hawkins ‘005 or Hawkins ‘510, each in view of Taylor and Graves.

In the Request for Reconsideration (Request), Appellants assert that we misapprehended and/or overlooked several items in our Decision, including the following:

- (1) Taylor does not disclose dissolving urea;
- (2) Hawkins ‘005 implies urea does not dissolve or is not necessarily dissolved before heating the reaction mixture to the temperature of reaction when using a solid form of urea; and
- (3) Appellants’ statement of unexpected results and the record evidence were improperly disregarded in our Decision.

We disagree with Appellants’ viewpoint as expressed in the Request. The Request does not present any points that we consider to have been misapprehended or overlooked in arriving at the Decision rendered September 28, 2006. *Cf.* 37 CFR § 41.52 (“The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board.”). In arriving at our Decision, we, of course, took into account the arguments and evidence raised in the Briefs and the evidence of obviousness relied on by the Examiner. The contentions made in the Request do not persuade us that the obviousness determination and conclusion reached in our Decision is premised on reversible factual and/or legal error.

In particular, Appellants’ contentions in the Request about the disclosures of Taylor and Hawkins ‘005 are misplaced and/or wrong. A reading of those prior art references, Appellants’ specification, the Appeal Briefs, the Examiner’s Answer, and our Decision makes this plain.

Specifically, we note: (1) Taylor incorporates by reference the disclosure of Hawkins '005 and teaches that the triazone formation preferably occurs in aqueous solutions (Taylor at col. 3, ll. 48-57); (2) Taylor assesses the skill in the art as being at least adequate for selecting any suitable form of the triazone forming reactants (Taylor at col. 4, ll. 29-35); (3) Taylor, via the incorporated by reference Hawkins '005, discloses or suggests that the selection of a solid form of urea reactant is an available option (Hawkins '005 at col. 6, ll. 61-64); (4) Appellants acknowledge that urea is soluble in water (Specification 2, ll. 6-7); (5) Taylor teaches heating a solution of charged reactants with the reactants held at a temperature below about 70 degrees Centigrade, preferably below about 60 degrees Centigrade during the charging and prior to the aforementioned heating step (Taylor at col. 4, ll. 6-13); and (6) Hawkins '005 teaches that urea, formaldehyde, and ammonia can be mixed in an aqueous solution before heating to the reaction temperature (Hawkins '005 at col. 6, ll. 39-64). Thus, one of ordinary skill in the art would have understood from the applied references, including Hawkins and Taylor, that a solid form of urea could be employed and dissolved during a mixing step at a lower temperature before the heating to the reaction temperature takes place.

Finally, the suggestion in the Request that Appellants have stated that the Example 1 results presented in the Specification are unexpected and that those unexpected results have been improperly disregarded in the Decision that was reached is untenable. Appellants, in their Briefs, did not point to any location in the Specification where the applicants stated that Example 1 demonstrated unexpected results, nor did our review of the Specification so find (Decision 7). It is well settled that the question as to

whether unexpected advantages have been demonstrated is a factual question. *In re Johnson*, 747 F.2d 1456, 1460, 223 USPQ 1260, 1263 (Fed. Cir. 1984). Moreover, it is incumbent upon Appellants to supply the factual basis to rebut the *prima facie* case of obviousness established by the Examiner. *See, e.g., In re Klosak*, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972). The burden was on Appellants to ferret out the facts to show the unexpected cause-and-effect relationship which Appellants desire to show for the here-claimed subject matter. Appellants did not accomplish this on the record before us in this appeal. *See In re Heyna*, 360 F.2d 222, 228, 149 USPQ 692, 697 (CCPA 1966); *In re Dunn*, 349 F.2d 433, 439, 146 USPQ 479, 483 (CCPA 1965).

Consequently, we remain of the opinion that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103(a) in view of the prior art relied upon by the Examiner and considered in light of Appellants' specification evidence.

#### CONCLUSION

Appellants have pointed to no issues of fact or law that we misapprehended or overlooked, which would require any change in our previous Decision. Thus, we have granted Appellants' Request to the extent that we have reconsidered our decision of September 28, 2006, but we deny the Request with respect to making any changes therein.

#### REHEARING DENIED

clj

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