

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALFRED E. BENTON
and
CHESTER D. BEINTEMA

Appeal No. 1999-1267
Application No. 08/755,150

ON BRIEF

Before GARRIS, WALTZ, and KRATZ, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-9, 11-15, 17, 18 and 20-25 which are all of the claims remaining in the application.¹

¹By an apparently inadvertent oversight, the claim amendment filed October 21, 1996 has not been clerically processed. This oversight should be rectified upon return of the application file to the jurisdiction of the Examining Corps.

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The subject matter on appeal relates to a method of making feed blocks which comprises providing a fluid mixture comprising molasses into a dehydration vessel, adjusting the pH of the fluid mixture to between 7.5 and 9.5 by the addition of a base containing a bivalent metal ion, heating the fluid mixture to form a dehydrated mixture and forming the dehydrated mixture into feed blocks. This appealed subject matter is adequately illustrated by independent claim 24 which reads as follows:

24. A method for making feed block comprising the steps of:

providing a fluid mixture comprising molasses into a dehydration vessel having a heating section and a cooling section;

adjusting the pH of the fluid mixture to between 7.5 and 9.5 by the addition of a base containing a bivalent metal ion;

agitating the fluid mixture;

heating the fluid mixture in the heating section to a temperature less than about 180°F to drive water from the fluid mixture and produce a dehydrated mixture;

applying sufficient cooling to the cooling section to condense the water vapor and produce condensed water;

collecting and removing the condensed water from the dehydration vessel; and

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forming the dehydrated mixture into feed blocks.

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The references relied upon by the examiner as evidence of obviousness are:

Martin 1955	2,707,151	Apr. 26,
Forkner 1962	3,057,739	Oct. 9,
Williams 1963	3,103,439	Sep. 10,
Benton et al. (Benton) 1988	4,749,578	Jun. 7,

All of the appealed claims stand rejected under 35 U.S.C.

§ 103 as being unpatentable over Benton in view of Martin, Williams and Forkner.

We refer to the brief and to the answer for a complete exposition of the opposing viewpoints expressed by the appellants and by the examiner concerning the above-noted rejection.

OPINION

For the reasons set forth below, this rejection cannot be sustained.

Each of the independent claims on appeal requires adjusting the pH of the fluid mixture to between 7.5 and 9.5. Regarding this pH range, the examiner points out that Benton

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discloses a pH range between about 6.2 and about 6.8. Citing

In re Ayers,

154 F.2d 182, 69 USPQ 109 (CCPA 1946) for the proposition that

"about" permits some tolerance, the examiner argues that the

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"about 6.8" upper end of patentee's pH range would have rendered obvious the appellants' "7.5" lower end of the pH range recited in the appealed independent claims.

The examiner's rationale is not without factual and legal support. Nevertheless, we cannot agree with his consequent obviousness conclusion. In essence, we share the appellants' viewpoint that Benton's upper pH value would have not have suggested the here-claimed lower pH value because of the acidic versus alkaline characteristics of these respective values and because the actual difference in these values is significant due to the logarithmic nature of the pH scale. Furthermore, the nonobviousness conclusion resulting from this viewpoint is reinforced by Benton's disclosure at lines 29-34 in column 3 which effectively teaches away from the use of alkaline pH values such as those here-claimed.

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In light of the foregoing, it is our determination that the reference evidence adduced by the examiner fails to establish a prima facie case of obviousness with respect to the appellants' claimed method which employs pH values of the type discussed above. For this reason alone, we cannot sustain the Section 103 rejection before us on this appeal.

The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
THOMAS A. WALTZ)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
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)	
PETER F. KRATZ)	
Administrative Patent Judge)	

BRG:hh

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