

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BOYCE D. BURTS, JR.

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Appeal No. 2003-0515  
Application No. 09/296,216

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HEARD: AUGUST 20, 2003

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Before WALTZ, TIMM and PAWLIKOWSKI, Administrative Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 13. A copy of each of these claims is set forth in the attached Appendix.

Claims 1, 2, and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sydansk in view of Githens.

Claims 1 through 4 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Merrill in view of Githens.

Claims 1, 2, and 5 through 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over House in view of Horner and Githens.

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Claims 1 through 13 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 10 of co-pending Application No. 09/296,217 in view of Sydansk.

Claims 1 through 13 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 10 of co-pending Application No. 09/307,544 in view of Sydansk.

The examiner relies upon the following references as evidence of unpatentability:

Horner et al. (Horner)	3,208,524	Sep. 28, 1965
Githens	4,566,979	Jan. 28, 1986
Sydansk	4,989,673	Feb. 5, 1991
House et al. (House)	5,004,553	Apr. 2, 1991
Merrill	5,377,760	Jan. 3, 1995
Claims 1-10 of Application No. 09/296,217, filed April 22, 1999		
Claims 1-10 of Application No. 09/307,544, filed May 7, 1999		

#### OPINION

On page 1 of the Brief, appellant indicates that the present case is related to two other applications. We have rendered a decision on an appeal in one of these applications. This decision was mailed on July 17, 2003 (S.N. 09/307,544, Appeal No. 2003-0604). The claims of this application are relied upon by the examiner in one of the provisional obviousness-type double patenting rejections in the present case. A copy of this decision is attached herewith. The claims of the other related application (S.N. 09/296,217) are also relied upon by the examiner in one of the provisional obviousness-type double patenting rejections in the present case.

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This appeal has the same issues already considered and decided upon in Appeal No. 2003-0604. We therefore incorporate our decision in Appeal No. 2003-0604 in its entirety herein. In view of our decision made in 2003-0604, we reverse each of the 35 U.S.C. § 103 rejections. However, each of the provisional rejections under the judicially created doctrine of obviousness-type double patenting is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Thomas A. Waltz	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
Catherine Timm	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
Beverly A. Pawlikowski	)	
Administrative Patent Judge	)	

APPENDIX

1. A conformance additive comprising a dry mixture of water soluble crosslinkable polymer, a crosslinking agent, and a reinforcing material selected from among fibers and comminuted plant materials.
2. The additive of claim 1 wherein the polymer is an a (sic) carboxylate-containing polymer and the crosslinking agent is a chromic carboxylate complex.
3. The additive of claim 2 wherein the reinforcing material comprises hydrophilic and hydrophobic fibers.
4. The additive of claim 3 wherein the hydrophobic fibers comprise at least one selected from the group of hydrophobic fibers consisting essentially of nylon, rayon, and hydrocarbon fibers, and wherein the hydrophilic fibers comprise at least one selected from the group of hydrophilic fibers consisting essentially of glass, cellulose, carbon, silicon, graphite, calcined petroleum coke, and cotton fibers.
5. The additive of claim 2 wherein the reinforcing material comprises comminuted plant material.
6. The additive of claim 5 wherein the reinforcing material comprises at least one comminuted material selected from the group of comminuted plant materials consisting essentially of nut and seed shells or hulls of almond, brazil, cocoa bean, coconut, cotton, flax, grass, linseed, maize, millet, oat, peach, peanut, rice, rye, soybean, sunflower, walnut, and wheat; rice tips; rice straw; rice bran; crude pectate pulp; peat moss fibers; flax; cotton; cotton linters; wool; sugar cane; paper; bagasse; bamboo; corn stalks; sawdust; wood; bark; straw; cork; dehydrated vegetable matter; whole ground corn cobs; corn cob light density pith core; corn cob ground woody ring portion; corn cob chaff portion; cotton seed stems; flax stems; wheat stems; sunflower seed stems; soybean stems; maize stems; rye grass stems; millet stems; and mixtures thereof.
7. The additive of claim 2 wherein the polymer is a partially hydrolyzed polyacrylamide.

8. The additive of claim 7 wherein the reinforcing material is a comminuted material selected from among comminuted materials derived from peanuts, wood, paper any portion of rice seed or plant, any portion of corn cobs, and mixtures thereof.

9. The additive of claim 8 wherein the additive further includes cellophane, and wherein the reinforcing material is a comminuted material selected from among mixtures of comminuted rice fraction and peanut hulls; mixtures of comminuted rice fraction, and wood fiber or almond hulls; mixtures of comminuted rice fraction and corn cob fraction; and mixtures of comminuted rice fraction and corn cob fraction and at least one of wood fiber, nut shells, and paper.

10. The additive of claim 9 wherein the reinforcing material comprises comminuted mixture of rice fraction, corn cob pith and chaff, cedar fiber, nut shells, and paper.

11. A method of forming a conformance fluid comprising:

(a) providing a conformance additive comprising a dry mixture of water soluble crosslinkable polymer, a crosslinking agent, and a reinforcing material selected from along fibers and comminuted plant materials; and

(b) contacting the conformance additive with water or an aqueous solution to form the conformance fluid.

12. The method of claim 11 wherein the polymer is a partially hydrolyzed polyacrylamide, the crosslinking agent is a chromic carboxylate complex, wherein the additive further includes cellophane, and wherein the reinforcing material is a comminuted material selected from among mixtures of comminuted rice fraction and peanut hulls; mixtures of comminuted rice fraction, and wood fiber or almond hulls; mixtures of comminuted rice fraction and corn cob fraction; and mixtures of comminuted rice fraction and corn cob fraction and at least one of wood fiber, nut shells, and paper.

13. The additive of claim 12 wherein the reinforcing material comprises comminuted mixture of rice fraction, corn cob pith and chaff, cedar fiber, nut shells, and paper.

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