

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DENNIS S. MURPHY,  
KRISTINA M. NEUSER,  
MYONGSUK BAE-LEE,  
FENG-LUNG G. HSU,  
DANIEL J. KUZMENKA,  
and  
BARBARA BORY

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Appeal No. 2003-0529  
Application No. 09/213,045

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ON BRIEF

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Before WARREN, DELMENDO, and POTEATE, Administrative Patent Judges.

DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 (2002) from the examiner's final rejection of claims 6 through 8, which are all the claims pending in the above-identified application.

The subject matter on appeal relates to an aqueous, transparent or translucent, heavy duty liquid laundry detergent in a transparent bottle. (Specification, page 1.) Further details of this appealed subject matter are recited in representative claims 6 and 7, the only independent claims on appeal, reproduced below:

6. A transparent or translucent aqueous heavy duty liquid composition [sic] in a transparent bottle comprising:

(a) 10 to 85% by wt. of a surfactant selected from the group consisting of anionic, nonionic, cationic, amphoteric, zwitterionic s [sic] surfactants and mixtures thereof;

(b) 0.001 to 1% by wt. of a colorant dye; and

(c) 0.001 to 1% fluorescent dye;

(d) wherein the transparent or translucent composition has about 50% transmittance or greater of light using 1 cm curvette [sic] at wavelength of 410-800 nanometers; and

wherein transparent bottle has light transmittance of greater than 25% at wavelength of about 410-800 nm.

7. A transparent or translucent aqueous heavy duty [sic] liquid composition in a transparent bottle comprising:

(a) 10 to 85% by wt. of a surfactant selected from the group consisting of anionic, nonionic, cationic, amphoteric, zwitterionic surfactants and mixtures thereof;

(b) 0.001 to 1% by wt. of a colorant dye; and

(c) 0.001 to 1% of a UV absorber;

wherein the transparent or translucent composition has about 50% transmittance or greater of light using 1 cm cuvette at wavelength of 410-800 nanometers; and

wherein transparent bottle has light transmittance of greater than 25% at wavelength of about 410-8000 nm.



compound" within the meaning of §102 where the specific compound falls within a genus of a "very limited number of compounds.").

Applying these principles, we share the appellants' view (appeal brief filed Jul. 18, 2002, paper 29, pages 10-11) that Wixon does not describe every limitation of the claimed invention within the meaning of 35 U.S.C. § 102. Specifically, Wixon teaches a liquid laundry detergent composition capable of washing soiled fabrics in an aqueous wash liquid, which composition includes a nonionic surface active agent and a sulfosuccinamate surface active agent as the essential surfactants, a mono-higher alkyl quaternary ammonium compound cationic fabric softener, and optionally an anionic surfactant. (Column 5, lines 8-23; column 15, lines 45-48.) According to Wixon, "[t]he composition may be packaged in any suitable container or packaging material such as metal, plastic or glass." (Column 17, lines 54-56.) Wixon states that the nonionic surfactant may be present in an amount of 10-50 parts by weight (preferably 12-25 parts by weight), the monoalkyl quaternary surfactant may be present in an amount of 1-20 parts by weight (preferably 2-16 parts by weight), and the sulfosuccinamate surfactant may be present in an amount of 1-20 parts by weight (preferably 2-16 parts by weight). (Column 9, lines 39-50.)

Wixon also teaches (column 5, lines 17-23):

In the preferred embodiment, the detergent composition is in the form of an aqueous liquid and the composition may include at least one coloring and/or whitening agent, especially dyes, bluing agents, and optical brighteners and mixtures thereof, and other optional detergent adjuvants, especially enzymes and solid release agents.

Regarding the use of adjuvants, Wixon further discloses (column 14, lines 24-42):

Various selected compatible adjuvants may also be present in the detergent composition to give it additional desired properties, either of functional or aesthetic nature. Thus, there may be included in the formulation: enzymes, e.g. proteases, amylases, lipases, etc., and mixtures thereof; bleaching agents; bleach activators and stabilizers; soil-suspending or anti-redeposition agents, e.g. polyvinyl alcohol, sodium carboxymethyl cellulose, hydroxypropyl methyl cellulose; soil release agents, e.g. Polymer QJC from Alkaril Chemical for motor oil release, etc; dyes, bluing agents, pigments, optical brighteners, e.g., cotton, amide and polyester brighteners; bactericides, e.g. hexachlorophene; preservatives, e.g. methyl parasept or sodium benzoate; ultraviolet absorbers; pH modifying agents, e.g. amines, pH buffers; opacifying agents, e.g. behenic acid, polystyrene suspensions, etc; and perfumes. The adjuvants, of course, will be chosen to be compatible with the main constituents of the detergent formulation.

The amount for the optical brightener, which the appellants concede is a fluorescent dye (appeal brief, page 10), is said to "normally be from about 0.2% to about 3.0%, and preferably from 0.25 to 2.7%" (column 15, lines 18-20); the preferred amounts

Appeal No. 2003-0529  
Application No. 09/213,045

for the "other adjuvants" are taught as being "less than 5%, preferably less than 3%" (column 15, lines 39-40).

In our view, Wixon's teachings are not sufficiently specific to have placed one of ordinary skill in the art in possession of the claimed invention, because one of ordinary skill in the art would have had to resort to "picking, choosing, and combining various disclosures" to arrive at a composition encompassed by the appealed claims. Arkley, 455 F.2d at 587, 172 USPQ at 526.

Furthermore, we agree with the appellants' statement (appeal brief, page 10) that Wixon does not describe a transparent bottle as recited in the appealed claims. While the examiner argues (answer, page 3) that "[t]he disclosure of packaging by Wixon encompasses any plastic or glass material, which would include translucent or transparent glasses and plastics," such an argument is not appropriate in a rejection under 35 U.S.C. § 102.

For these reasons, we reverse the examiner's rejection under 35 U.S.C. § 102(b) of appealed claims 6 through 8 as anticipated by Wixon.

The decision of the examiner is reversed.

Remand Order

Upon return of this application to the examiner's jurisdiction, the appellants and the examiner should analyze whether one of ordinary skill in the art would have considered the subject matter of the appealed claims to have been obvious over Wixon, alone or in combination with other prior art, within the meaning of 35 U.S.C. § 103.

In addition, the appellants and the examiner should consider whether there is adequate written description in the original specification for the subject matter of appealed claim 7, which was added by amendment on Mar. 28, 2001 (paper 19). Specifically, we note that appealed claim 7 recites: "wherein transparent bottle has light transmittance of greater than 25% at wavelength of about 410-8000 nm." (Emphasis added.)

Appeal No. 2003-0529  
Application No. 09/213,045

This application, by virtue of its "special" status, requires an immediate action. See MPEP § 708.01(D) (8th ed., Rev. 1, Feb. 2003). Thus, it is important that the Board be promptly informed of any action affecting the appeal in this case.

REVERSED & REMANDED

Charles F. Warren	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
Romulo H. Delmendo	)	
Administrative Patent Judge	)	APPEALS AND
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	)	INTERFERENCES
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	)	
Linda R. Poteate	)	
Administrative Patent Judge	)	

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Appeal No. 2003-0529  
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