

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ALFREDO VINCI,  
KENNETH R. CUMMINGS  
AND M. STEPHEN LAJOIE

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Appeal No. 95-4575  
Application 08/097,063<sup>1</sup>

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ON BRIEF

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Before GARRIS, PAK and OWENS, Administrative Patent Judges.  
GARRIS, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed July 23, 1993.

Appeal No. 95-4575  
Application No. 08/097,063

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1 through 7 and 9 through 12 which are all of the claims remaining in the application.

The subject matter on appeal relates to a process for the production of deodorized fatty acid salt feed supplement product which comprises (1) forming an admixture of reactive ingredients comprising fatty acid, basic alkaline earth metal compound, an aqueous medium and a primary amine and (2) recovering a deodorized fatty acid salt product after completion of the exothermic salt-forming reaction. This appealed subject matter is adequately illustrated by claim 1, the sole independent claim on appeal, which reads as follows:

1. A process for the production of a deodorized fatty acid salt feed supplement product which comprises (1) forming an admixture of reactive ingredients comprising (a) at least one C<sub>14</sub>-C<sub>22</sub> fatty acid which has a detectable content of malodorous carbonyl compound, (b) between about 0.8-1.5 equivalents of basic alkaline earth metal compound per equivalent of C<sub>14</sub>-C<sub>22</sub> fatty acid, (c) between about 10-80 weight percent of an aqueous medium, based on the weight of fatty acid, and (d) between about 0.1-10 weight percent of R-NH<sub>2</sub> primary amine, based on the weight of fatty acid, where R in the primary amine formula is a C<sub>1</sub>-C<sub>10</sub> organic substituent; and (2) recovering a deodorized fatty acid salt product after completion of the exothermic salt-forming reaction.

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

McAskie	4,853,233	Aug. 1, 1989
Behan et al. (Behan)	5,204,023	Apr. 20, 1993

The appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over McAskie in view of Behan. It is the examiner's basic position that "it would have been obvious to one of ordinary skill in this art to include/incorporate the amine compound chemical trapping agent disclosed in Behan . . . in the reactive/reaction mixture of McAskie" (Answer, page 4).

We cannot sustain this rejection.

As correctly pointed out by the appellants, Behan teaches removing or reducing unpleasant malodors arising from the presence of aldehydic materials in products such as edible fats by adding thereto a malodor counteractant which comprises the reaction product of an amine and an organoleptically acceptable aldehyde. This reaction product constitutes a Schiff's base. Thus, even if the teachings of McAskie and Behan were combined in the manner proposed by the examiner, the resulting process would include as an admixture of reactive ingredients a Schiff's base rather than a primary amine as required by the appealed claims.

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The examiner's comments at item (2) on page 5 of the answer suggest that he may believe a primary amine would be "derived from/generated by" Behan's above-noted Schiff's base. However, we find no evidence, and the examiner points to none, in support of such a belief. Similarly, even if a primary amine were "derived from/generated by" the Schiff's base, we find no evidence that this would occur during McAskie's step of forming an admixture of a fatty acid and a basic alkaline earth metal compound in an aqueous medium as required by the independent claim on appeal.

In light of the foregoing, we cannot sustain the examiner's Section 103 rejection of claims 1 through 7 and 9 through 12 as being unpatentable over McAskie in view of Behan.

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The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
CHUNG K. PAK	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
TERRY J. OWENS	)	
Administrative Patent Judge	)	

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