

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

51

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JUERGEN MOHR, KNUT OPPENLAENDER, CHARALAMPOS GOUSETIS,  
RALF KAESTNER, NORBERT RIEBER MARTIN FISCHER and JUERGEN THOMAS

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Appeal No. 1998-1214  
Application No. 08/701,188

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ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-3, 9 and 10, which are all of the claims pending in this application.

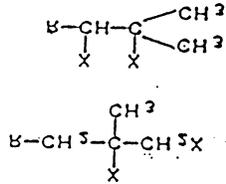
BACKGROUND

Appellants' invention relates to a fuel composition for internal combustion engines that includes detergent and dispersant effective amounts of compounds of a formula Ia and/or Ib as set forth in the appealed claims. An

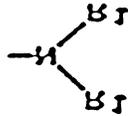
understanding of the invention can be derived from a reading  
of exemplary claim 1, which

is reproduced

1. A fuel  
internal  
engines containing  
effective and  
t-effective  
compounds of formulae Ia and Ib



IP  
below.  
for  
combustion  
detergent-  
dispersan  
amounts of



500 to 5,000 and in each of the two formulae one of the  
radicals X is OH and the other is the group

where the radicals  $R_1$  may be identical or different and are  
each hydrogen, alkyl, hydroxyalkyl or aminoalkyl which may be  
substituted by further hydroxyl- or amino-carrying alkyl  
radicals, or the two radicals  $R_1$  may form a nonaromatic ring.

The prior art references of record relied upon by the  
examiner in rejecting the appealed claims are:

Brennan 1958	2,856,363	Oct. 14,
Kimura et al. (Kimura) 1974	3,794,586	Feb. 26,
Kummer et al. (Kummer) 1989	4,832,702	May 23,

Claims 1-3, 9 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kummer in view of Brennan and Kimura.

#### OPINION

After careful consideration of the issues raised in this appeal and with the arguments of both appellants and the examiner, we find that the examiner's § 103 rejection of the appealed claims is not sustainable. Our reasoning follows.

As acknowledged by the examiner (answer, page 3), Kummer discloses a fuel composition comprising polybutylamines or polyisobutylamines but does not disclose a fuel composition that corresponds to any of the herein appealed claims; that is, a fuel composition that includes compounds of appellants' formula Ia and/or Ib. As argued by appellants (brief, pages 3

and 4 and reply brief, pages 1-3), the examiner has not shown how combining the teachings of Brennan concerning an anti-rust lubricating oil composition containing epoxyalkaneamine reaction products and the teachings of Kimura concerning a lubricating oil composition that includes a reaction product of a specified polyolefin epoxide with a polyamine with the teachings of Kummer would have led one of ordinary skill in the art to appellants' claimed fuel composition. Concerning this matter, the examiner's conclusory statements in the paragraph bridging pages 4 and 5 of the answer regarding "closely related" and "structurally similar" compounds used as fuel additives in Kummer and the expected properties thereof fall significantly short of establishing how the combined teachings of the applied references would have reasonably suggested the proposed modification of Kummer to one of ordinary skill in the art and would have resulted in a fuel composition that corresponds to appellants' fuel composition.<sup>1</sup>

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<sup>1</sup> We are cognizant of appellants' somewhat waffling view (brief, page 5) as to whether the reaction product of Example 3 of Kimura may or may not be a compound embraced by appellants' formula Ia or Ib. Nonetheless, the burden is on

On this record, we are constrained to reverse the stated rejection.

CONCLUSION

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the examiner to explain how that example of Kimura alone or in combination with the other applied art would have rendered the fuel composition claimed herein prima facie obvious to one of ordinary skill in the art. This, the examiner has not done.

The decision of the examiner to reject claims 1-3, 9 and 10 under 35 U.S.C. § 103 as being unpatentable over Kummer in view of Brennan and Kimura is reversed.

REVERSED

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
CHUNG K. PAK	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
PETER F. KRATZ	)	
Administrative Patent Judge	)	

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Keil and Weinkauf  
1101 Connecticut Avenue NW  
Washington, DC 20036