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Craig W. Roddy Halliburton Energy Services, Inc. 2600 South Second Street P. O. Box 1431 Duncan, OK 73536			MARCANTONI, PAUL D	
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BEFORE THE PATENT TRIAL  
AND APPEAL BOARD

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*Ex parte* SAM LEWIS, RITA MCKINLEY, and RUSSELL FITZGERALD

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Appeal 2011-010306  
Application 11/689,688  
Technology Center 1700

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Before LINDA M. GAUDETTE, MICHAEL P. COLAIANNI, and  
DONNA M. PRAISS, *Administrative Patent Judges*.

PRAISS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 the final rejection of claims 1-11 and 19. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

Appellants' invention is said to be directed to additives for particulate materials and, specifically, "compositions that may improve the flow properties of dry particulate cementitious and non-cementitious materials and related methods of synthesis and use" (Spec. para. [0002]).<sup>1</sup>

Claim 1 is illustrative (limitations in dispute are italicized):

1. A method comprising:

providing a flow enhancing additive comprising a flow inducing chemical, a solid adsorbent particulate material, ethylene glycol, and water, *wherein the flow inducing chemical, the water, and the ethylene glycol are adsorbed on the particulate solid adsorbent material such that the flow enhancing additive is in particulate form;*

providing a cementitious material, a non-cementitious material, or a mixture of cementitious and non-cementitious material; and

blending the flow enhancing additive with the cementitious material, the non-cementitious material, or the mixture of cementitious and non-cementitious material.

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<sup>1</sup> The invention is said to be related to co-pending application U.S. Serial No. 11/689,716 (Attorney Docket No. HES 2006-IP-022639U2) (Spec. para. [0001]). The co-pending application, filed concurrently with the application that is the subject of this appeal, is the subject of Appeal No. 2011-010298. Both Appeal No. 2011-010298 and the present appeal were filed concurrently; however, the concurrent appeal is not identified as a related appeal (App. Br. 3).

The following rejection is before us on appeal:<sup>2</sup>

Claims 1-11 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reddy (US 6,494,951 B1 issued Dec. 17, 2002) alone or in view of Kunzi '198 (US 5,447,198 issued Sept. 5, 1995) or Kunzi '550 (US 5,346,550 issued Sept. 13, 1994).

Appellants argue the subject matter common to independent claims 1 and 19 (App. Br. 13-16). We select claim 1 as representative. In the absence of separate substantive arguments, dependent claims 2-11 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1).

#### ISSUE

Did the Examiner reversibly err in determining that Reddy's disclosure of a particulate solid adsorbent material, a flow inducing chemical, and water combined with Kunzi '198's disclosure of ethylene glycol would have rendered obvious the claimed method? We decide this issue in the negative.

#### FINDINGS OF FACT AND ANALYSES

Appellants distinguish Reddy on the basis that water is added to form a pumpable slurry. App. Br. 14. Appellants distinguish Kunzi '198 and Kunzi '550 on the basis that ethylene glycol is used as a freezing point depressant during mixing and "a secondary freezing point depressant is added 'to prevent freezing of . . . excess water in the pores of the set cement

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<sup>2</sup> The Examiner withdrew the rejection of claims 1-11 and 19 under 35 U.S.C. § 102(b) (and alternatively 35 U.S.C. § 103(a)) as well as the rejection of claims 1-11 and 19 under 35 U.S.C. § 112, second paragraph. Ans. 3.

...” *Id.* at 14-15 (quoting Kunzi ‘198, col. 6, ll. 10-12). Appellants further argue that the combination of Reddy and Kunzi ‘198 would result in a composition that is in slurry form rather than in particulate form because ethylene glycol would only be added to “free, liquid water” and water would not be added to a dry mixture unless a slurry is desired. *Id.* at 15-16.

The Examiner responds that Reddy is relied upon for disclosing the particulate solid adsorbent, flow inducing chemical and water, which is the slurry form of Reddy, and that “[t]he timing of adding water does not take away from the fact that when water is mixed with particulate solid adsorbent and flow inducing chemical (e.g. precipitated silica and glacial acetic acid) will teach the appellants’ claimed [flow inducing additive].” Ans. 5. The Examiner also responds that an additional freezing point depressant as in Kunzi ‘198 neither detracts from the fact that Kunzi ‘198 discloses ethylene glycol as a freezing point depressant nor is it precluded by the claims. *Id.* at 6.

The preponderance of the evidence favors the Examiner’s obviousness conclusion.

Reddy broadly discloses that the combination of a particulate solid material (precipitated silica, zeolite, talcum, diatomaceous earth and fuller’s earth) and a flow inducing polar chemical (polar molecule producing organic acids, their salts and acid anhydrides) functions as a flow enhancing additive. Reddy, col. 3, ll. 8-14; Ans. 4. Reddy also discloses a composition in which water is combined with the flow enhancing additive. Reddy, col. 4, ll. 24-25; Ans. 4. Kunzi ‘198 broadly discloses ethylene glycol as a preferred freezing point depressant. Kunzi ‘198, col. 2, ll. 38-43; Ans. 4-5. The Examiner reasonably finds that one of ordinary skill in the art would

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have added ethylene glycol to the water containing composition of Reddy “to give cement resistance to freeze thaw cycling”. Ans. 4-5.

Appellants have not shown any difference between (a) the process of making the pumpable slurry of Reddy combined with the ethylene glycol component of Kunzi ‘198 and (b) the claimed method, which does not preclude the further addition of water. Therefore, we agree with the Examiner’s finding that the claimed flow enhancing additive is formed by the method of Reddy combined with the ethylene glycol of Kunzi ‘198 and that such a method would have resulted in the method as claimed.

On this record, we affirm the Examiner’s § 103 rejection.

#### DECISION

The Examiner’s decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136.

#### ORDER

#### AFFIRMED

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