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DOW CORNING CORPORATION CO1232 2200 W. SALZBURG ROAD P.O. BOX 994 MIDLAND, MI 48686-0994			SULLIVAN, DANIEL M	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIC JUDE JOFFRE

Appeal 2011-010461
Application 11/885,092
Technology Center 1600

Before ERIC GRIMES, LORA M. GREEN, and MELANIE L.
McCOLLUM, *Administrative Patent Judges*.

McCOLLUM, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING¹

¹ On November 29, 2012, Appellant filed a paper entitled “Response.” This paper does not request any amendment to the claims, nor does it present new evidence that was not previously in the record. The paper therefore did not present a basis on which the Examiner could withdraw the rejection. *See* 37 C.F.R. § 41.50(b)(1) (“The new ground of rejection is binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision.”). The MPEP states: “If the appellant submits an argument without either an appropriate amendment or new evidence as to any of the claims rejected by the Board, it will be treated as a

Appellant has requested rehearing of the Decision entered October 2, 2012. This Decision affirmed the rejection of claims 1-8 and 15 under 35 U.S.C. § 103(a), but designated the affirmance as a new ground of rejection under 37 C.F.R. § 41.50(b). We deny the request.

STATEMENT OF THE CASE

The Examiner rejected claims 1-8 and 15 as obvious over Hamachi et al. (US 2004/0138373 A1, Jul. 15, 2004) in view of Pate et al. (US 6,783,766 B2, Aug. 31, 2004) (Ans. 3). In affirming the rejection, we concluded “that it would have been prima facie obvious to include sodium taurocholate[, as disclosed in Pate,] in Hamachi’s emulsion composition to maintain its stability” (Decision 3-4).

PRINCIPLES OF LAW

“[I]t is well settled that unexpected results must be established by factual evidence. ‘Mere argument or conclusory statements in the specification does not suffice.’” *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (quoting *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984)).

ANALYSIS

Appellant argues that “the present claims are non-obvious over Hamachi in view of Pate because of unexpected results” (Req. Reh’g 2). In particular, Appellant “requests the present claims be reconsidered in view of the comparative examples as provided in the specification” (*id.*). We are not persuaded.

request for rehearing under 37 CFR 41.50(b)(2).” MPEP § 1214.01. We have therefore treated Appellant’s response as a request for rehearing.

We have reviewed the examples provided in the Specification. We note that the use of sodium taurocholate (Example 1) appears to provide a difference in the amount of D₄, which “is an abbreviation for octamethylcyclotetrasiloxane” (Spec. 20, ¶ [0079]), as compared to the surfactants used in Comparative Examples 1 and 2 (*id.* at Figure 1). However, Appellant has not pointed to any evidence indicating that this is an unexpectedly superior result. We therefore conclude that Appellant has not provided sufficient evidence to rebut the *prima facie* case of obviousness.

CONCLUSION

Appellant’s Request for Rehearing does not persuade us of any error in our decision affirming the rejection of claims 1-8 and 15 under 35 U.S.C. § 103(a). We have considered all of Appellant’s arguments but decline to modify the original decision. The Request for Rehearing is denied.

TIME PERIOD FOR RESPONSE

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

REHEARING DENIED

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