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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICK L. ADKINS, SHRINIWAS S. CHAUK, and JAMES R. CHARRON[1]

Appeal 2015-005623
Application 13/598,832
Technology Center 1700

Before BRADLEY R. GARRIS, JAMES C. HOUSEL, and AVELYN M. ROSS, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1–18. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a polymer polyol comprising the free-radical polymerization product of one or more base polyols with styrene containing

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[1] Bayer MaterialScience LLC is identified as the real party in interest. App. Br. 1.

less than or equal to 1000 ppm of impurities (independent claim 1). Appellants also claim a process for the preparation of such a polymer polyol (independent claim 9).

A copy of representative claims 1 and 9, taken from the Claims Appendix of the Appeal Brief, appears below.

> 1. A polymer polyol comprising the free-radical polymerization product of
> (A) one or more base polyols;
> (B) optionally, one or more preformed stabilizers;
> with
> (C) one or more ethylenically unsaturated monomers, wherein at least one of said monomers is styrene which contains less than or equal to 1000 ppm of impurities;
> in the presence of
> (D) at least one free radical polymerization catalyst;
> and, optionally,
> (E) one or more chain transfer agents.
>
> 9. A process for the preparation of a polymer polyol comprising:
> (I) free-radically polymerizing
> (A) one or more base polyols;
> (B) optionally, one or more preformed stabilizers;
> with
> (C) one or more ethylenically unsaturated monomers, wherein at least one of said monomers is styrene which contains less than or equal to 1000 ppm of impurities;
> in the presence of
> (D) at least one free radial polymerization catalyst;
> and, optionally,
> (E) one or more chain transfer agents.

The Examiner rejects claims 1–18 under 35 U.S.C. § 103(a) as unpatentable over Adkins '882 (US 7,179,882 B2, issued Feb. 20, 2007) in

view of Teshima (EP 0 662 465 A1, published July 12, 1995) (Final Action 2–6).

On the ground of nonstatutory double patenting, the Examiner also rejects:

claims 1–5, 7–13, 15, and 16 over certain claims of Adkins '733 (US 8,383, 733 B2, issued Feb. 26, 2013) in view of Teshima (*id.* at 10–11);

claims 1–5, 7–13, 15, and 16 over certain claims of Chauk '423 (US 7,759,423 B2, issued July 20, 2010) in view of Teshima (*id.* at 12–14);

claims 1–5, 8–13, and 16–18 over certain claims of Adkins '882 in view of Teshima (*id.* at 14–16); and

claims 1–5, 7, 9–13, and 15 over certain claims of Adkins '975 (US 7,160,975 B2, issued Jan. 9, 2007) in view of Teshima (*id.* at 16–17).

Appellants present arguments specifically directed to independent claims 1 and 9 only (App. Br. 4–11 and 13–29). Therefore, the remaining claims on appeal will stand or fall with claims 1 and 9.

We sustain the above rejections based on the findings of fact, conclusions of law, and rebuttals to arguments expressed by the Examiner in the Final Action and Answer. The following comments are added for emphasis.

The § 103 Rejection

The Examiner finds that Adkins '882 discloses the general subject matter of independent claims 1 and 9 but does not disclose that the styrene monomer contains less than or equal to 1000 ppm of impurities as claimed

(*see, e.g.*, Final Action 3). The Examiner concludes that it would have been obvious to use as the styrene of Adkins '882 a styrene monomer having such a low level of impurities in view of Teshima (*id.*). According to the Examiner, "[t]he motivation would have been that minimizing the presence of impurities in the styrene monomer would, for example, provide greater control and consistency in the polymer polyols produced" (*id.*).

Appellants argue that Adkins '882 requires components which are not required by their claims and that it would not have been obvious to omit these components from the Adkins '882 polymer polyols (*see, e.g.*, App. Br. 5–6).

However, as repeatedly explained by the Examiner, the open claim term "comprising" does not exclude such components (Final Action 18–19; Ans. 16–17).

Appellants argue that no proper basis exists for combining Adkins '882 and Teshima (*see, e.g.*, App. Br. 7).

Appellants' argument reveals no error in the Examiner's reasoning that one having ordinary skill in this art would have used a low-impurities styrene of the type taught by Teshima as the styrene of Adkins 882 based on the logical rationale that minimizing impurities of reactants would enhance the consistency and quality of products (*see, e.g.*, Ans. 17–18).

Appellants appear to implicitly contend that Teshima is not analogous art by arguing "a reference that teaches various methods to reduce impurities

in styrene monomer is not reasonably pertinent to the instant claims" (*see, e.g.*, App. Br. 8).

We perceive no convincing merit in this argument. As correctly explained by the Examiner, "Teshima is reasonably pertinent to the particular problem with which the applicant was concerned, namely reducing the impurities which are typical by-products that occur during the process of producing styrene monomer (see, for example, page 4, lines 10 - 12 of the instant specification and page 2, lines 49 - 51 of Teshima)" (Final Action 19–20). Appellants state that they are not concerned with reducing impurities in styrene monomer (App. Br. 7–8) but do not embellish this statement with any reason why Teshima is not reasonably pertinent to problems resulting from the use of styrene monomer having excessive impurities.

For the reasons given by the Examiner and emphasized above, we sustain the § 103 rejection of claims 1–18 over Adkins '882 in view of Teshima.

The Double Patenting Rejections

In the double patenting rejections, as in the § 103 rejection, the Examiner concludes that it would have been obvious to use as the styrene of the patent claims a styrene monomer having the low level of impurities required by the rejected claims in view of Teshima in order to provide greater control and consistency in the product (*see, e.g.*, Final Action 10, 12, 14, 16).

Appellants' arguments against the double patenting rejections are analogous to one or more of the unsuccessful arguments presented against the § 103 rejection. For example, Appellants argue that the Examiner has not given an acceptable reason for combining the subject matter of the patent claims and Teshima in the manner proposed (*see, e.g.*, App. Br. 15, 19, 23, 27). These arguments are not persuasive as thoroughly detailed by the Examiner (*see, e.g.*, Ans. 21–34) and emphasized above.

We sustain, therefore, each of the previously listed double patenting rejections advanced in this appeal.

Conclusion

The decision of the Examiner is affirmed.

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).

AFFIRMED