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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/799,395	03/13/2013	Jose L. Chirino	BMS132012/MD10-12	3038
157	7590	10/27/2016	EXAMINER	
Covestro LLC 1 Covestro Circle PITTSBURGH, PA 15205			RODD, CHRISTOPHER M	
			ART UNIT	PAPER NUMBER
			1766	
			NOTIFICATION DATE	DELIVERY MODE
			10/27/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSE L. CHIRINO, JAMES P. MASON,
BRUCE L. HAGER, and MARINA ROGUNOVA

Appeal 2015-007055
Application 13/799,395
Technology Center 1700

Before ADRIENE LEPIANE HANLON, KAREN M. HASTINGS, and
LILAN REN, *Administrative Patent Judges*.

PER CURIAM

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1–18 under 35 U.S.C. § 103(a) as unpatentable over Seidel et al. (US 6,762,228 B2, issued July 13, 2004) (“Seidel”) with Hashimoto et al. (US 6,780,917 B2, issued Aug. 24, 2004) (“Hashimoto”). We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

Upon consideration of the evidence on this record and each of Appellants' contentions, we find that the preponderance of evidence on this record supports the Examiner's conclusion that the subject matter of Appellants' claims is unpatentable over the applied prior art. We sustain the above rejections based on the findings of fact, conclusions of law, and rebuttals to arguments expressed by the Examiner in the Answer.

We add the following for emphasis. The burden of showing unexpected results rests on the person who asserts them by establishing that the difference between the claimed invention and the closest prior art was an unexpected difference. *See In re Klosak*, 455 F.2d 1077, 1080 (CCPA 1972). Further, it is well established that the showing of unexpected results must be commensurate in scope with the claims. *See In re Peterson*, 315 F.3d 1325, 1330–331 (Fed. Cir. 2003). As the Examiner explains, Appellants’ mere conclusion that they “have unexpectedly found all three recited fillers at the claimed concentration are needed to achieve a UL 94-5VA rating” (Br. 6) is not sufficient to satisfy their burden (Ans. 4).

The Examiner further discusses the Specification examples, pointing out that they do not compare the claimed invention to the closest prior art and do not exemplify compositions that are commensurate in scope with the claims (*see, e.g.*, Ans. 4–8; no reply brief has been filed). Thus, the Examiner’s position that the Specification examples fail to evince unexpected results from the recited combination of components is supported by a preponderance of the evidence.

The decision of the Examiner 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(a).

AFFIRMED