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13/813,466	01/31/2013	Paulus Jacobus Fennis	TS 2465-US-PCT	6362
23632	7590	03/08/2018	EXAMINER	
SHELL OIL COMPANY P O BOX 576 HOUSTON, TX 77001-0576			RIOJA, MELISSA A	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PAULUS JACOBUS FENNIS, MARTINUS JOHANNES MARIA  
LELIEVELD, and WILLEM KARZIJN<sup>1</sup>

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Appeal 2017-005865  
Application 13/813,466  
Technology Center 1700

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Before BRADLEY R. GARRIS, JEFFREY B. ROBERTSON, and  
BRIAN D. RANGE, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellants appeal from the Examiner's rejections under 35 U.S.C. § 103(a) of claims 1–5 and 11–16 as unpatentable over Eleveld (US 6,403,667 B1, iss. June 11, 2002) in view of Fogg (US 6,455,603 B1, iss. Sept. 24, 2002) and claims 6–10 as unpatentable over Eleveld in view of Chauk (US 2006/0025492 A1, Feb. 2, 2006). We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

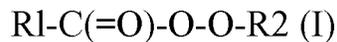
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<sup>1</sup> Shell Oil Company is identified as the real party in interest (Br. 2).

Appellants claim a process for the preparation of a polymer polyol that comprises polymerizing a mixture including a polymerization initiator of a certain formula, wherein the step of polymerizing occurs substantially in the absence of a preformed stabilizer (independent claims 1 and 6).

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

1. A process for the preparation of a polymer polyol having a solid polymer content which is at most 60 wt.%, which process comprises mixing a base polyol, one or more ethylenically unsaturated monomers, a polymerization initiator, optionally a macromer, and optionally a chain transfer agent, and polymerizing the mixture thus obtained at a temperature of below 120°C, wherein the initiator is of formula



wherein R1 is an alkyl group and R2 is an alkyl group of formula



wherein R3 and R4 are the same or different and are an alkyl group, R5, R6 and R7 are the same or different and are a hydrogen atom or an alkyl group wherein the step of polymerizing the mixture occurs substantially in the absence of a preformed stabilizer and wherein the base polyol is a polyetherpolyol with a nominal functionality of greater than 2.5 and a molecular weight in the range of from 200 to 14000.

Appellants do not present arguments specifically directed to dependent claims 2–5 and 7–16 (*see* Br. 3–4). As a consequence, these dependent claims will stand or fall with their parent independent claims of which claim 1 is representative.

We sustain the Examiner's § 103 rejections for the reasons given in the Final Office Action, the Answer, and below.

It is undisputed that Eleveld forms a terpolymer stabilizer during formation of a polymer polyol using a peroxide initiator albeit not the peroxide initiators encompassed by claims 1 and 6 (*see, e.g.*, Eleveld col. 2, ll. 27–35, col. 5, ll. 17–26). It also is undisputed that each of Fogg and Chauk prepares a polymer polyol in the presence of a preformed stabilizer using a peroxide initiator, wherein Fogg’s tert-butyl peroxy-2-ethylhexanoate initiator (Fogg col. 6, ll. 10–22) is within the scope of claim 1 and Chauk’s 1,1,3,3-tetramethylbutyl peroxy-2-ethylhexanoate initiator (Chauk ¶ 90) is within the scope of claim 6.

In rejecting the independent claims, the Examiner concludes that it would have been obvious to use as Eleveld’s initiator the above-mentioned initiators of Fogg (Final Action 4) or Chauk (*id.* at 6–7).

Appellants correctly point out that Eleveld’s initiator functions to initiate terpolymerization to form stabilizer while also initiating polymerization to form polymer polyol whereas the initiators of Fogg and Chauk are “only needed to initiate the polymerization of the [polymer polyol] because the preformed stabilizer is already present” (Br. 3, 4). Appellants then argue without embellishment that “[i]t would not have been obvious to one of ordinary skill in the art to replace the initiator taught by Eleveld [] with the initiator taught by [Fogg or Chauk] that requires a preformed stabilizer be present in the mixture” (*id.* at 3, 4).

We perceive no convincing merit in Appellants’ apparent belief that an artisan would not have had a reasonable expectation of successfully using the peroxide initiator of Fogg or Chauk as the peroxide initiator of Eleveld to form the latter’s stabilizer as well as polymer polyol. As pointed out by the

Examiner, Eleveld's disclosure of peroxide initiators broadly is "evidence that there would be a reasonable expectation of success in the use of any known peroxide initiator [such as the peroxide initiators of Fogg and Chauk] for the polymerization of monomers in the preparation of polymer polyols [via the process of Eleveld]" (Ans. 5–6). Significantly, Appellants do not challenge the Examiner's point in the record of this appeal (i.e., no Reply Brief has been filed).

In addition, we observe that Fogg and Chauk teach using the same peroxide initiators for preparing both the preformed stabilizer (Fogg col. 5, ll. 44–60; Chauk ¶ 71) and the polymer polyol (Fogg col. 6, ll. 10–22; Chauk ¶ 90). These teachings reinforce the proposition that the peroxide initiators of Fogg and Chauk would have had a reasonable expectation of successfully performing the function of Eleveld's peroxide initiators wherein both the stabilizer and polymer polyol are formed together.

In summary, Appellants' above quoted argument fails to reveal error in the Examiner's § 103 rejections of independent claims 1 and 6 as well as dependent claims 2–5 and 7–16.

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)(1)(iv).

AFFIRMED