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13/509,325	07/17/2012	Hans-Georg Fritz	66835-0148	1005
109973	7590	01/18/2019	EXAMINER	
Bejin Bieneman PLC 2000 Town Center Suite 800 Southfield, MI 48075			NILAND, PATRICK DENNIS	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HANS-GEORG FRITZ, MARCUS KLEINER, MICHAEL ZABEL, BENJAMIN WOHR, and GEORG M. SOMMER<sup>1</sup>

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Appeal 2018-002326  
Application 13/509,325  
Technology Center 1700

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Before BRADLEY R. GARRIS, JEFFREY T. SMITH, and MERRELL C. CASHION, JR., *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 11 and 13–15. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a composition comprising an unhardened multi-component paint system and a blocking agent that is present from a dosage of 10-30% “by volume” of the composition (sole independent claim 11).

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<sup>1</sup> Duerr Systems GmbH is identified as the real party in interest (App. Br. 3).

A copy of representative claim 11, taken from the Claims Appendix of the Appeal Brief, appears below.

11. A composition, comprising an unhardened multi-component paint system and a blocking agent, where said blocking agent is present from a dosage of 10-30% by volume of the composition in order to at least delay hardening of the multi-component paint system, wherein the multi-component paint system includes at least one paint component and at least one hardener component.

Under 35 U.S.C. § 112(a) or § 112 (pre-AIA), 1<sup>st</sup> paragraph, the Examiner rejects claims 11 and 13–15 as failing to comply with the written description requirement (Final Action 6–7). The Examiner determines that the originally filed disclosure does not provide written description support for the amended claim 11 requirement defining the percentage of blocking agent as being “by volume” and that the amended claim 11 term “dosage” does not require the percentage to be “by volume” (*id.*). As support for this latter determination, the Examiner states that “LD50 is given in weight of toxin per unit weight of the subject to which the toxin is administered” (*id.* at 7).

We sustain the Examiner’s rejection for the reasons given in the Final Office Action and the Answer with the following comments added for emphasis and completeness.

Appellants correctly point out that their Specification discloses blocking agent percentages in terms of a “dosage” (App. Br. 6 (citing Spec. ¶¶ 97–98)) and argue that “dosage . . . in painting means volume” (*id.*). As

support for this argument, Appellants in their Reply Brief present the following quoted statement from the 37 C.F.R. § 1.132 Fritz Declaration of record:

Nothing in the application suggests anything other than volumetric measurements. This is made clear by the fact that the patent [application] describes pumps, which are well known to be positive displacement or volumetric pumps and the patent [application] describes the percentages in terms of “dosages” which means by volume.

(Reply Br. 5 (quoting from Decl. ¶ 5)).<sup>2</sup>

In both the Final Action and the Answer, the Examiner responds to Appellants’ argument and the above quoted Declaration statement by observing that “[n]o evidence is provided to show that ‘dosage’ means ‘by volume’ [as claimed]” and that “[w]hile pumps displace volumes, they also displace weights” (Final Action 13–14, Ans. 20).

We agree with the Examiner. In the record before us, Appellants proffer no convincing evidence that their original disclosure, including their disclosure of “dosage” and pumps, reasonably conveys to those skilled in the paint system art that Appellants had possession of the claimed “by volume” subject matter as of the application filing date. *See ARIAD Pharm., Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) en banc (“[T]he test for [written description] sufficiency is whether the disclosure of the

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<sup>2</sup> This is the only portion of the Fritz Declaration that Appellants specifically reference in their Appeal Brief and Reply Brief arguments contesting the Examiner’s rejection.

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application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.”).

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).

AFFIRMED