

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANTHONY J. FALOTICO, BRUCE R. CONLEY,  
LOUIS R. MAZZOLA, and HERMAN L. MARDER

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Appeal No. 1997-3389  
Application No. 08/449,956

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ON BRIEF

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Before CAROFF, WARREN, and WALTZ, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This decision on appeal relates to the final rejection of claims 1-11, all the claims pending in appellants' application. Similar claims are under appeal in related applications 08/436,182 (Appeal No. 97-3332) and 08/522,164 (Appeal No. 97-3350).

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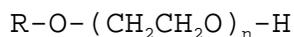
The present claims, like those in the related applications, are directed to a laundry detergent composition which includes, inter alia, a nonionic ethoxylated alcohol surfactant and an anionic ethoxylated alcohol sulfate salt as a second surfactant.

Appellants stipulate on page 5 of their Brief that the appealed claims stand or fall together. Accordingly, we will limit our consideration to claim 1, the sole independent claim, which reads as follows:

1. A powder laundry detergent composition with improved cold water residue properties, which is a granulated blend of ingredients comprising (1) between about 40-90 weight percent of a water-soluble detergent builder ingredient wherein at least 72 weight percent of the detergent builder ingredient is sodium carbonate; and (2) between about 5-40 weight percent of a detergent active ingredient which is a surfactant blend comprising (a) between about 40-80 weight percent, based on the surfactant weight, of an anionic salt compound corresponding to the formula:



where R is a C<sub>10</sub>-C<sub>15</sub> alkyl group, n is an average number of ethoxylate groups between about 1-9, and M is an alkali metal or ammonium cation, and (b) between about 20-60 weight percent, based on surfactant weight, of a nonionic compound corresponding to the formula:



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where R is a C<sub>10</sub>-C<sub>15</sub> alkyl group, and n is an average number of ethoxylate groups between about 1-9; (3) between about 0-12 weight percent of water-soluble inorganic potassium salt; and (4) less than about 5 weight percent of phosphate.

The prior art references relied upon by the examiner on appeal are:

Boucher et al. (Boucher)	5,180,515	Jan. 19,
1993		
Mazzola	5,443,751	Aug. 22,
1995		

(effective filing date: March 5, 1993)

All of the appealed claims stand rejected under 35 USC § 103 for obviousness in view of either Boucher or Mazzola.

Having carefully considered the entire record in light of the opposing arguments on appeal, we find that the examiner has established a prima facie case of obviousness which has not been overcome by evidence relied upon by appellants. Accordingly, we shall affirm the examiner's rejection based upon the teachings of either Boucher or Mazzola.

In particular, we agree with the examiner that both references disclose powder or granular laundry detergent compositions which essentially encompass the claimed

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formulation. To the extent that some concentration ranges recited in the claims may differ slightly from those disclosed in the references, we have no doubt that it would have been obvious within the purview of 35 USC § 103 to optimize component proportions absent any showing of unexpected results. See In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980); In re Aller, 220 F. 2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

In this regard, we also note that appellants claim that sodium carbonate is present in their composition in an amount which is "at least 72 weight percent of the detergent builder ingredient". The detergent builder is claimed as constituting "about 40-90 weight percent" of the total composition. Viewed in this light, the claimed carbonate concentration actually overlaps the broad range of "5-70 weight percent" disclosed by Boucher (col. 2, l. 27) considering that the percentages given by Boucher relate to the composition as a whole rather than to the detergent builder component alone. Similarly, the concentration of sodium carbonate employed in working example I of Mazzola also is within the scope of the instant claims.

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With regard to the claimed phosphate concentration of "less than about 5 weight percent" (claim 1), we observe that Boucher, (col. 2, l. 26) broadly teaches a phosphate range of "from about 5 to 70 weight %". We have underlined the term "about" in the aforementioned citations since, in our view, the term suggests that the claimed phosphate range can be fairly taken to read on the lower end of the range disclosed by Boucher. See In re Ayers, 154 F.2d 182, 185, 69 USPQ 109, 112 (CCPA 1946). Further, as pointed out by the examiner, the amount of phosphate employed in working examples IVA and IVB appears to be within the scope of the instant claims.

We further observe that the open-ended term "comprising", as used in claim 1, does not preclude addition of other components such as the fatty acid salt coating of Mazzola.

We recognize that appellants rely upon data presented in their specification (pages 16-18; Example II), and the Mazzola Declaration filed in related application 08/436,182, as evidence of nonobviousness. This evidence appears to be identical to that relied upon in Appeal No. 97-3332. Accordingly, we hold that the evidence proffered by appellants

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is unpersuasive for the reasons set forth in our decision in Appeal No. 97-3332.

Those reasons are repeated below for completeness.

According to appellants and the Mazzola Declaration, this evidence demonstrates that a Neodol 23-3 based surfactant blend contributes improved cold water residue properties to a carbonate-based laundry detergent in comparison with a Neodol 25-3 based surfactant blend as used in the working examples of the Mazzola patent.<sup>1</sup> However, appellants have failed to explain how they arrived at that conclusion based on the data reported in their specification on page 18 (Example II). Appellants have the burden of explaining the relevance and significance of the data presented. See In re Borkowski, 505 F.2d 713, 719, 184 USPQ 29, 33 (CCPA 1974).

Appellants have failed to explain the relevance of the data upon which they rely. As we see it, in comparative Example II none of the samples listed in the Table on page 18 of the specification appear to correspond to either Neodol 23-

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<sup>1</sup> According to appellants' specification (page 8 and 11), Neodol 23-3 is a mixture of ethoxylated C<sub>12</sub>-C<sub>13</sub> alcohols; whereas Neodol 25-3 is a mixture of ethoxylated C<sub>12</sub>-C<sub>15</sub> alcohols.

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3 or Neodol 25-3. In addition, the statement "weight percent of the undissolved solids is calculated" (page 16, l. 27-28; emphasis supplied) appears to conflict with the heading "% Dissolved" in the middle column of the Table.

Moreover, even if appellants were to clearly demonstrate unexpected results for a Neodol 23-3 blend as compared to a Neodol 25-3 blend, such a showing would not be commensurate in scope with the appealed claims which are not specifically limited to Neodol 23-3 nonionic/anionic surfactant blends based upon a "mixture of C<sub>12</sub>-C<sub>13</sub> alcohols which have an average content of three ethoxylate groups per alcohol molecule" (see appellants' specification: page 8, l. 20-22).

For all of the foregoing reasons, the decision of the examiner is affirmed.

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

AFFIRMED

MARC L. CAROFF

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Administrative Patent Judge	)	
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	)	BOARD OF PATENT
CHARLES F. WARREN	)	APPEALS
Administrative Patent Judge	)	AND
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THOMAS A. WALTZ	)	
Administrative Patent Judge	)	

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APJ CAROFF

APJ WARREN

APJ WALTZ

DECISION: AFFIRMED  
Send Reference(s): Yes No  
or Translation (s)  
Panel Change: Yes No  
Index Sheet-2901 Rejection(s):

Prepared: August 24, 2001

Draft                  Final

3 MEM. CONF.    Y                  N

OB/HD                  GAU

PALM / ACTS 2 / BOOK  
DISK (FOIA) / REPORT