

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GARY HIGTON, ROGER GLYDE  
AND ROBERT A. WILKINSON

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Appeal No. 2001-2071  
Application 09/285,921

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ON BRIEF

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Before OWENS, WALTZ and POTEATE, *Administrative Patent Judges*.  
OWENS, *Administrative Patent Judge*.

*ON REQUEST FOR REHEARING*

The appellants request rehearing of our decision (mailed August 27, 2002, paper no. 17) wherein we affirmed the rejection of claims 1-14 under 35 U.S.C. § 103 over Song.

In their brief the appellants argued that the data in their specification (page 24, table 1) show that concentrates formed by blending the appellants' components (A) and (B) in the presence

of (C) have a viscosity which is lower by a factor of two to five compared to concentrates formed by blending identical components (A) and (B) in the absence of (C) (brief, page 3). We stated in our decision (page 5) that because Song would have fairly suggested, to one of ordinary skill in the art, combining the appellants' components (A), (B) and (C) simultaneously or in any order, the proper comparison would be between blending components (A) and (B) in the presence of (C) versus blending (A) and (B) in the absence of (C) and then blending (C) into the mixture of (A) and (B).

The appellants argue in their request for rehearing (page 4) that even if adding (C) to a previously formed mixture of (A) and (B) lowers the viscosity of that mixture, the processability and handling of the mixture of (A) and (B), due to its relatively high viscosity, would be relatively difficult during the period before (C) is added. Consequently, the appellants argue, the effect of the presence of (C) on the viscosity of a mixture of (A) and (B) is of importance even if subsequent addition of (C) to a mixture of (A) and (B) lowers the viscosity of that mixture. *See id.* The appellants argue that the effect of the presence of (C) is not suggested by Song, and is an unexpected result. *See id.*

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A comparison of the appellants' mixing sequence versus blending (A) and (B) in the absence of (C) and then blending (C) into the mixture of (A) and (B) is needed to determine whether the appellants' mixing sequence would have been unexpected by one of ordinary skill in the art. The reason is that if mixing (A) and (B) in the absence of (C) produces a mixture that is difficult to handle and process due to its high viscosity, but subsequently blending (C) with that mixture lowers the viscosity to a suitable level, then it reasonably appears that one of ordinary skill in the art would have expected that mixing (C) simultaneously with (A) and (B) would produce a mixture having the desired lower viscosity.

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We have reconsidered our decision in view of the appellants' request for rehearing, but for the above reason we decline to make any change to the decision.

*DENIED*

TERRY J. OWENS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
THOMAS A. WALTZ	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
LINDA R. POTEATE	)	
Administrative Patent Judge	)	

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