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15/617,781	06/08/2017	Gunda KUHLMANN	15-15-EP01.US	2764
33249 7590 10/27/2021 Hexion Inc			EXAMINER	
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lisa.jones@hexion.com tammy.hodges@hexion.com UNITED STATES PATENT AND TRADEMARK OFFICE

## BEFORE THE PATENT TRIAL AND APPEAL BOARD

*Ex parte* GUNDA KUHLMANN, CHRISTOPH SCHEUER, PANAGIOTIS SALTAPIDAS, and THOMAS DREβEN

Appeal 2020-006793 Application 15/617,781 Technology Center 1700

Before CATHERINE Q. TIMM, DONNA M. PRAISS, and JENNIFER R. GUPTA, *Administrative Patent Judges*.

GUPTA, Administrative Patent Judge.

## DECISION ON APPEAL<sup>1</sup>

Pursuant to 35 U.S.C. 134(a), Appellant<sup>2</sup> appeals from the

Examiner's decision to reject claims 1–13. We have jurisdiction under

35 U.S.C. § 6(b).

We AFFIRM.

<sup>&</sup>lt;sup>1</sup> In this Decision, we refer to the Specification filed June 8, 2017 ("Spec."); the Final Office Action dated December 26, 2019 ("Final Act."); the Appeal Brief filed June 22, 2020 ("Appeal Br."); the Examiner's Answer dated July 31, 2020 ("Ans."); and the Reply Brief filed September 29, 2020.

<sup>&</sup>lt;sup>2</sup> "Appellant" refers to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Hexion Inc. Appeal Br. 3.

## CLAIMED SUBJECT MATTER

The claims are directed to a composition including a polymer based on epoxide compounds. Spec. 1, lines 1–2. Independent claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A composition comprising components a), b) and c), wherein component a) comprises:

1) from 75 to 99.5% by weight of a polymer based on epoxide compounds,

2) from 0.5 to 25% by weight of at least one polyhydric alcohol and

3) optionally additives,

wherein component b) comprises:

1) from 80 to 99% by weight of a curing agent which is suitable for curing the polymer based on epoxide compounds,

2) from 1 to 20% by weight of a polycaprolactone-polysiloxane block copolymer,

3) optionally an accelerator, and

4) optionally additives, and

wherein component c) comprises: optionally an accelerator.

# REJECTION

Claims 1–13 stand rejected under 35 U.S.C. § 103 as unpatentable

over Dangayach<sup>3</sup> in view of Karunakaran,<sup>4</sup> as evidenced by Yamaguchi.<sup>5</sup> Final Act. 2–6.

<sup>&</sup>lt;sup>3</sup> Dangayach et al., US 5,284,938, issued Feb. 8, 1994.

<sup>&</sup>lt;sup>4</sup> Karunakaran et al., US 8,927,677 B2, issued Jan. 6, 2015.

<sup>&</sup>lt;sup>5</sup> Yamaguchi et al., US 2008/0254288 A1, published Oct. 16, 2008.

#### DISCUSSION

After reviewing the evidence in light of the Appellant's and the Examiner's opposing positions, we determine that Appellant has not identified reversible error in the Examiner's rejection. Thus, we sustain the Examiner's rejection for the reasons well expressed in the Final Office Action and the Answer. We add the following primarily for emphasis.

The Examiner finds that Dangayach teaches claim 1's composition except for component (a)(2), "from 0.5 to 25% by weight of at least one polyhydric alcohol." Final Act. 3. The Examiner finds that Karunakaran, like Dangayach, teaches epoxy resin compositions that may be useful for encapsulation, such as electronic encapsulations. Ans. 8; Karunkaran, code (57), 7:30–40. Specifically, the Examiner finds that Karunakaran teaches the use of polypropylene oxide polyols, such as polypropylene glycol, a polyhydric alcohol, as a toughening agent in epoxy compositions to enhance fracture toughness without sacrificing the glass transition temperature (Tg) of the final thermoset product. Final Act. 3 (citing Karunakaran, code (57), 7:30–40). Based on Karunakaran's teaching, the Examiner finds that it would have been obvious to incorporate a polypropylene glycol in Dangayach's polysiloxane-modified epoxy-based encapsulation composition. Final Act. 3.

We find no merit in Appellant's argument that the same or substantially the same claims in EP 3255103 B1 were found novel and nonobvious over Dangayach and thereby granted by the European Patent Office (EPO). Appeal Br. 9; Reply Br. 2. We are not bound by an earlier decision of the EPO. *In re Gyurik*, 596 F.2d 1012, 1016 (CCPA 1979) ("Each case is determined on its own merits; allowed claims in other applications or patents

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are not considered in reviewing specific rejections of specific claims."); *In re Giolito*, 530 F.2d 397, 400 (CCPA 1976) ("We reject appellants' argument that the instant claims are allowable because similar claims have been allowed in a patent. It is immaterial whether similar claims have been allowed to others.").

Appellant argues that because the Dangayach composition already includes a toughening agent, one of ordinary skill in the art would not have had a reason to modify Dangayach's composition to include Karunakaran's poly(propylene oxide) polyol, which may have unknown synergistic effects on Dangayach's composition. Appeal Br. 12. Likewise, Appellant argues that one of ordinary skill in the art would not have had a reason to modify Karunakaran's composition to include Dangayach's polylactonepolysiloxane copolymer composition because it may have unknown synergistic effects on the composition. *Id.* 

Appellant's arguments do not identify reversible error in the Examiner's rejection. Because both Dangayach's polycaprolactonepolysiloxane block copolymer composition and Karunakaran's poly(propylene oxide) polyol were known to provide improved toughness, using them together for that same purpose would have been obvious to one of ordinary skill in the art. "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose." *In re Kerkhoven*, 626 F.2d 846, 850 (CCPA 1980). "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

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The data provided in Tables I and II in Appellant's Specification does not weigh against the Examiner's prima facie case of obviousness because, as Appellant admits, the results are not "unexpected." Reply Br. 5. "[W]hen unexpected results are used as evidence of nonobviousness, the results must be shown to be unexpected compared with the closest prior art." *In re Baxter Travenol Labs.*, 952 F.2d 388, 392 (Fed. Cir. 1991).

In view of the foregoing, we sustain the Examiner's rejection of claims 1–13 under 35 U.S.C. § 103 over Dangayach and Karunakaran.

#### CONCLUSION

The Examiner's decision to reject claims 1-13 is affirmed.

## DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–13	103	Dangayach, Karunkaran	1–13	

#### TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. 1.136(a). *See* 37 C.F.R. 1.136(a)(1)(iv).

## AFFIRMED