

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HYDRITE CHEMICAL CO.,
Petitioner,

v.

SOLENIS TECHNOLOGIES, L.P.,
Patent Owner.

Case IPR2015-01592
Patent No. 8,962,059

**PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH
PETITIONER'S REPLY**

Pursuant to 37 C.F.R. §§ 42.64(b)(1), Patent Owner, Solenis Technologies, L.P. (“Solenis” or “Patent Owner”), objects to evidence and arguments submitted by Petitioner, Hydrite Chemical Co., (“Hydrite” or “Petitioner”) in connection with its Petitioner’s Reply to Patent Owner’s Response, filed on July 15, 2016, for the following reasons:

1. Solenis objects to Petitioner’s Reply because it contains arguments and evidence (addressing, for example, motivation to combine and objective indicia of nonobviousness) that should have been addressed in the petition, and/or that raise new issues for the first time on reply that could have been raised in the petition. *See* 37 CFR § 43.23(b) (“[a] reply may only respond to arguments raised in the corresponding...patent owner response.”) and Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012) (“While replies can help crystallize issues for decision, a reply that raises a new issue or belatedly presents evidence will not be considered and may be returned. The Board will not attempt to sort proper from improper portions of the reply. Examples of indications that a new issue has been raised in a reply include new evidence necessary to make out a *prima facie* case for the patentability or unpatentability of an original or proposed substitute claim, and new

evidence that could have been presented in a prior filing.”). Examples include the following:

- a. New evidence/argument concerning simultaneous invention, including reference to U.S. Patent No. 8,841,469.
 - b. New argument/rationale concerning the Rockstraw testimony on pages 4-7.
2. Solenis objects to Hydrite’s Ex. 1022 because it has not been authenticated as required by Federal Rule of Evidence (“FRE”) 901 and is not self-authenticating under FRE 902. Additionally, Solenis objects to Ex. 1022 under FRE 801 because it is hearsay and contains hearsay. For example, Hydrite relies on Ex. 1022 for the truth of the matter asserted – that the “slides disclose corn oil recovery through the addition of polysorbate 80/Tween 80.” Solenis also objects to Ex. 1022 under FRE 401-403 because this document is irrelevant to the issues in the proceeding, including being irrelevant to establishing whether there was any guidance and motivation that would have allowed a person of ordinary skill to arrive at the ’469 Patent’s claims, and is misleading in how it is being presented. Further, Hydrite has failed to establish when Ex. 1022 was first publicly available.

3. Solenis objects to Hydrite's Ex. 1025 because it contains impermissible new issues and new evidence and arguments, including in reference to Exhibits 1027 and 1028, to support its *prima facie* case for unpatentability that could have been presented in a prior filing. *See* 37 CFR § 43.23(b) and Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012).
4. Solenis objects to Hydrite's Ex. 1027 because it has not been authenticated as required by FRE 901 and is not self-authenticating under FRE 902. Additionally, Solenis objects to Ex. 1027 under FRE 801 because it is hearsay and contains hearsay. For example, Hydrite relies on Ex. 1027 for the truth of the matter asserted – that “an ‘HLB opposing that for emulsion being treated’ can be used as ‘DEMULSIFIERS.’” Solenis also objects to Ex. 1027 under FRE 401-403 because this document is irrelevant to the issues in the proceeding, including being irrelevant to establishing whether there was any guidance and motivation that would have allowed a person of ordinary skill to arrive at the '469 Patent's claims, and is misleading in how it is being presented. Furthermore, Solenis objects to Hydrite's Ex. 1027 because it raises impermissible new issues that could have been presented in the petition.

See 37 CFR § 43.23(b) and Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012).

5. Solenis objects to Hydrite’s Ex. 1028 under FRE 401-403 because it is irrelevant to the issues in this proceeding. Additionally, Solenis objects to Ex. 1028 because it has not been authenticated under FRE 901 and is not self-authenticating under FRE 902. Solenis also objects to Ex. 1028 under FRE 801 because it is hearsay and contains hearsay. For example, Ex. 1028 is being offered for the truth of the matter asserted – that phosphatides are naturally present in corn oil.
6. Solenis objects to Hydrite’s Ex. 1029 because it has not been authenticated under FRE 901 and is not self-authenticating under FRE 902. Additionally, Solenis objects to Ex. 1029 under FRE 801 because it is hearsay and contains hearsay. For example, Hydrite relies on Ex. 1029 for the truth of the matter asserted – “that biodiesel production and the low carbon fuel standard increasing demand for corn oil.” Solenis also objects to Ex. 1029 under FRE 401-403 because the document is irrelevant to the issues in the proceeding, including being irrelevant to refuting any objective indicia of nonobviousness, and is misleading in how it is being offered.

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