

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 8,962,059

**PATENT OWNER'S MOTION FOR OBSERVATION ON CROSS
EXAMINATION OF PETITIONER'S REPLY WITNESS
DAVID A. ROCKSTRAW**

Patent Owner, Solenis Technologies, L.P. (“Solenis”), respectfully asks the Board to consider and enter this Motion for Observation on Cross-Examination of Petitioner’s reply witness David A. Rockstraw. *See* Scheduling Order, Paper 8, p. 7; DUE DATE 4. Dr. Rockstraw’s reply declaration is Exhibit 1025, and the transcript of the cross-examination deposition is presented in its entirety as Exhibit 2029. The observations are set forth below:

1. In Ex. 2028 at 11:24 – 12:16; 14:14-23, Dr. Rockstraw testified that “opposite” typically means “something from the other end of the spectrum” and agreed that “a surfactant with an HLB of 16 would not be considered of the opposite type relative to another surfactant that has an HLB of 15” because he “would consider both of them to be predominantly hydrophilic.” This testimony is relevant to the Alther reference’s (Ex. 1007) disclosure that “to counter the effects of emulsifiers that enhance dispersion, suspension and wetting of particles, emulsifiers of the *opposite type*, which can disrupt the HLB, can be applied” (Ex. 1007 at 83, second column, emphasis added). The testimony is relevant because it supports Solenis’s analysis of Alther’s teachings set forth in Solenis’s Response (Paper 15 at 35-36) and reproduced in Dr. Rockstraw’s reply declaration (Ex. 1025 at ¶¶20-21).

2. In Ex. 2028 at 18:23 – 19:12; 22:12 – 23:3, Dr. Rockstraw testified that the word “or” is used to connect options in the alternative, and that when

Alther refers to the use of a “strongly hydrophilic surfactant *or* a strongly lipophilic surfactant” (Ex. 1007 at 83, second column, emphasis added), Alther is teaching the use of only one of the surfactant types in a given emulsion system, and is not teaching that the two surfactant types are alternatives for use in a given system.

This testimony is relevant to the interpretation of Alther, and supports Solenis’s analysis of Alther’s teachings set forth in Solenis’s Response (Paper 15 at 35-36) and reproduced in Dr. Rockstraw’s reply declaration (Ex. 1025 at ¶¶20-21).

3. In Ex. 2028 at 21:15-22; 37:8-16; 38:5-39:17; 41:12 - 42:22, Dr. Rockstraw testified that when Alther refers to “emulsifiers of the opposite type” to “counter the effects of emulsifiers that enhance dispersion, suspension, and wetting of particles,” Alther is comparing one emulsifier to another emulsifier, and that this is different than the reference in Atlas (Ex. 1027) to a surfactant that has an “HLB opposing that for emulsion being treated” in that the latter involves comparison of a surfactant to an emulsion. This testimony is relevant to the respective teachings of Alther and Atlas, and supports Solenis’s analysis of Alther’s teachings set forth in Solenis’s Response (Paper 15 at 35-36) and reproduced in Dr. Rockstraw’s reply declaration (Ex. 1025 at ¶¶20-21) as well as Solenis’s contention that Hydrite’s reliance on Atlas (Ex. 1027) constitutes new evidence and argument that exceeds the scope of a proper reply (*see* Patent Owner’s Identification of New Evidence and Argument in Petitioner’s Reply Papers, filed herewith).

4. In Ex. 2028 at 26:22 – 27:2; 74:2-14, Dr. Rockstraw testified that there was no reason why he could not have cited Ex. 1027 (“Atlas”) when preparing his original declaration. This testimony is relevant to Dr. Rockstraw’s reliance on Atlas (Ex 1027) in his reply declaration, including Atlas’s disclosure that demulsifiers can have an “HLB opposing that for emulsion being treated” (*see* Ex. 1025 at ¶17). This testimony is relevant because it supports Solenis’s contention that Atlas (Ex. 1027) is impermissible new reply evidence that could have been presented in a prior filing (*see* Patent Owner’s Identification of New Evidence and Argument in Petitioner’s Reply Papers, filed herewith).

5. In Ex. 2028 at 60:1 – 61:24; 63:8-18; 64:3 – 65:19; 66:5-9; 67:3 – 68:21; 70:21 – 71:8, Dr. Rockstraw testified that he incorrectly alleged that Solenis had “mischaracterized” his opinion and had set forth a “faulty analysis” regarding the teachings of Alther (*see* Ex. 1025 at ¶¶20-23). Dr. Rockstraw testified that Solenis’s analysis was correct based on the language in his original declaration. This testimony is relevant to Dr. Rockstraw’s criticism of Solenis’s analysis regarding the teachings of Alther (*see* Ex. 1025 at ¶¶20-23). This testimony is relevant because it supports Solenis’s analysis of Alther’s teachings set forth in Solenis’s Response (Paper 15 at 35-36) and reproduced in Dr. Rockstraw’s reply declaration (Ex. 1025 at ¶¶20-21).

6. In Ex. 2028 at 94:20 – 96:12; 92:1 – 94:11, Dr. Rockstraw testified that the statement in his original declaration that “oil-soluble structures like corn gluten, phosphatides, and starches serve as hydrophilic surfactants to attract the water to the oil phase” is inconsistent with other statements in his original declaration, and that there would be at least two ways to resolve the alleged inconsistency, *i.e.*, the reader could assume that the above-quoted statement was in error or could assume that the “other” statements were in error. The testimony is relevant because, to the extent there was inconsistency in the respective statements, the testimony establishes that it was reasonable to take the above-quoted statement at face value, thereby supporting Solenis’s analysis of Alther’s teachings set forth in Solenis’s Response (Paper 15 at 35-36) and reproduced in Dr. Rockstraw’s reply declaration (Ex. 1025 at ¶¶20-21).

7. In Ex. 2028 at 98:19 – 99:18; 100:16-21; 107:17 – 108:9, Dr. Rockstraw testified that “I don’t know which elements of the corn stillage act as the surfactants” and that he did not know the HLB of corn gluten or the starches associated with corn. This testimony is relevant to an alleged error in Dr. Rockstraw’s original declaration relating to whether corn gluten and the starches associated with corn act as hydrophilic surfactants or hydrophobic surfactants (Ex. 1005 at ¶67). This testimony is relevant because it calls into question whether Dr. Rockstraw erred in his original declaration when he characterized these substances

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