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**Datasheet for the decision
of 3 June 2014**

Case Number: T 2094/11 - 3.3.10

Application Number: 03732726.9

Publication Number: 1513909

IPC: C09K7/06

Language of the proceedings: EN

Title of invention:

METHOD OF FORMULATING AND USING A DRILLING MUD WITH FRAGILE
GELS

Applicant:

HALLIBURTON ENERGY SERVICES, INC.

Headword:

Relevant legal provisions:

EPC Art. 123(2), 111(1)

Keyword:

Amendments - added subject-matter (no, after amendment)
Remittal to the examining division

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 2094/11 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 3 June 2014

Appellant: HALLIBURTON ENERGY SERVICES, INC.
(Applicant) P.O. Box 1431
Duncan, OK 73533 (US)

Representative: Curtis, Philip Anthony
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 21 April 2011
refusing European patent application No.
03732726.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman P. Gryczka
Members: R. Pérez Carlón
C. Schmidt

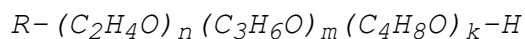
Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the examining division to refuse European patent application No. 03 732 726.
- II. The examining division considered that all of the then pending requests contained added subject-matter and, thus, contravened the requirements of Article 123(2) EPC.
- III. During the oral proceedings before the board, which took place on 3 June 2014, the appellant filed a main request replacing all previously filed requests. Claim 1 thereof reads as follows:

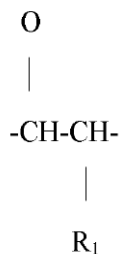
"A method for drilling boreholes or wellbores in a subterranean formation using a drilling fluid which does not have added to it any organophilic clays, the drilling fluid comprising:

- (a) *an invert emulsion base comprising a blend of one or more esters and one or more isomerized, or internal, olefins, wherein the esters comprise at least 10 and up to 99 weight percent of the blend; said esters being comprised of C₁₂ to C₁₄ fatty acids and 2-ethyl hexanol or C₈ fatty acids and 2-ethyl hexanol, and said olefins having 40 to 70 weight percent C₁₆ and about 20 to about 50 weight percent C₁₈;*
- (b) *one or more thinners, selected from at least one of the following groups:*

(i) *a compound having the formula:*



where R is a saturated or unsaturated, linear or branched alkyl radical having 8 to 24 carbon atoms, n is a number ranging from 1 to 10, m is a number ranging from 0 to 10, and k is a number ranging from 0 to 10; and (ii) a non-ionic surfactant, said surfactant being the reaction product of at least one oxide, selected from the group comprising ethylene oxide, propylene oxide and butylene oxide, with C₁₀₋₂₂ carboxylic acids or C₁₀₋₂₂ carboxylic acid derivatives containing at least one double bond in position 9/10 and/or 13/14 having structural units of the general formula:



where R₁ is a hydrogen atom, or an OH group, or a group OR₂, and where R₂ is an alkyl group of 1 to 18 carbon atoms, or an alkenyl group of 2 to 18 carbon atoms, or a group of the formula:



and where R₃ is a hydrogen atom, or an alkyl group of 1 to 21 carbon atoms, or an alkylene group of 2 to 21 carbon atoms.

[sic]

- (c) one or more emulsifiers; and
- (d) one or more weighting agents,

wherein the method comprises:

drilling in the subterranean formation using the drilling fluid;

stopping drilling to cause the drilling fluid to form a gel structure to suspend drill cuttings and weighting materials; and

resuming drilling to cause the drilling fluid to revert to a flowable or liquid state immediately upon resumption of drilling."

- IV. The final request of the appellant was that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of claims 1 to 4 of the main request.
- V. At the end of the oral proceedings, the decision was announced.

Reasons for the Decision

1. The appeal is admissible.

Amendments, Article 123(2) EPC:

2. Claim 1 finds a basis on the combination of claim 1 as originally filed and the following passages of the description:
- "a method for drilling boreholes or wellbores"
page 2, lines 12-13;
 - "which does not have added to it any organophilic clays" page 4, last two lines, and page 20, last two lines;

- "comprising a blend of one or more esters and one or more isomerized, or internal, olefins" page 17, last line and first line on page 18;
 - "wherein the esters comprise at least 10 and up to 99 weight percent of the blend" page 18, lines 5-6;
 - "said esters being comprised of C₁₂ to C₁₄ fatty acids and 2-ethyl hexanol or C₈ fatty acids and 2-ethyl hexanol" page 18, lines 16-17;
 - "said olefins having 40 to 70 weight percent C₁₆ and about 20 to about 50 weight percent C₁₈" page 18, lines 24-25;
 - "thinners having the formula (i)" page 13, lines 5-9;
 - "thinners having the formula (ii)" page 14, line 15 to page 15, line 2;
 - "drilling in the subterranean formation using the drilling fluid" page 2, lines 12-14;
 - "stopping drilling to cause the drilling fluid to form a gel structure to suspend drill cuttings and weighting materials" page 3, lines 7-10; and
 - "resuming drilling to cause the drilling fluid to revert to a flowable or liquid state immediately upon resumption of drilling" page 3, lines 13-14.
3. With respect to the dependent claims, claim 2 finds a basis on page 13, line 9 of the description of the application as originally filed, claim 3 on page 13, line 10, and claim 4 on page 13, line 11.
4. The main request does not contain subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).

Remittal:

5. The decision under appeal dealt solely with the issue of added subject-matter. As the examining division has not yet ruled on all the requirements of the EPC, the board considers it appropriate to exercise its power conferred on it by Article 111(1) EPC to remit the case to the examining division upon the basis of the claims according to the main request for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution on the basis of claims 1 to 4 of the main request filed during the oral proceedings before the board.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated