

United States District Court,  
S.D. California.

**Armand MINGIONE,**  
Plaintiff.

v.

**U.S. FOOD CORPORATION, a California Corporation; Robert Wilson, an individual; and Does 1 through X, inclusive,**  
Defendants.

No. 02CV1774-B(JMA)

**April 16, 2004.**

Henry G. Kohlmann, The Boeing Company, Irvine, CA, for Plaintiff.

Matthew D. Murphey, Gordon and Rees, Dallas, TX, for Defendants.

**ORDER CONSTRUING CLAIMS 1, 2, 5, 7, 10, 12-14, 16, and 18 OF U.S. PATENT NUMBER  
6,020,017**

**RUDI M. BREWSTER, Senior District Judge.**

In the above-identified case, Plaintiff, Armand Mingione ("Mingione"), brought suit against U.S. Food Corporation ("U.S.Food") for patent infringement of U.S. Patent Number 6,020,017 ('017 Patent).

Pursuant to *Markman v. Westview Instruments*, 52 F.3d 967 (Fed .Cir.1995), the Court conducted a hearing on April 8, 2004 to construe the disputed claim terms of Claims 1, 2, 5, 7, 10, 12-14, 16, and 18 of the '017 Patent.

The Court, with the assistance of the parties, prepared jury instructions interpreting the claim terms at issue in Claims 1, 2, 5, 7, 10, 12-14, 16, and 18 of the '017 Patent. Additionally, a "Glossary" was prepared for terms found in the '017 Patent, considered to be technical in nature and which a jury of laypersons would not understand without a specific definition. As the case advances, the parties may request additional terms to be added to the glossary as may seem helpful to the jury.

After careful consideration of the parties' arguments and the applicable law, the Court **HEREBY CONSTRUES** all disputed claim terms in Claims 1, 2, 5, 7, 10, 12-14, 16, and 18 of the '017 Patent, attached as Exhibit A. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in Exhibit B, attached hereto.

**IT IS SO ORDERED**

**Claim 1 of U.S. Patent No. 6,020,017**

<b>CLAIM LANGUAGE</b>	<b>COURT'S INTERPRETATION</b>
1. A heat resistant milk substitute comprising a mixture of:	1. A heat resistant milk substitute comprising [including, but not limited to] a mixture of:
a. whey in the range of about 10% to about 45% by dry weight of said mixture;	a. whey in the range of about [approximately, close to, near, but not necessarily equal to] 10% to about 45% by dry weight [weight of the whey with all liquid removed] of said mixture;
b. a sweetener;	b. a sweetener;
c. a catalyst to maintain ingredients in suspension after heat processing in the range of 0.5% to 3% by dry weight of said mixture comprising tetrasodium pyrophosphate;	c. a catalyst [a substance which speeds up or slows down a chemical reaction] to maintain ingredients in suspension after heat processing in the range of 0.5% to 3% by dry weight of said mixture comprising tetrasodium pyrophosphate;
and	and
d. a stabilizer emulsifier	d. a stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension]

**Claim 2 of U.S. Patent No. 6,020,017**

2. A milk substitute mixture as described in claim 1 wherein by dry weight of said mixture;	2. A milk substitute mixture as described in claim 1 wherein by dry weight of said mixture;
a. said whey is in the range of about 10% to about 45%;	a. said whey is in the range of about 10% to about 45%;
b. said sweetener is corn syrup solids in the range of about 5% to about 30%;	b. said sweetener is corn syrup solids in the range of about 5% to about 30%;
c. said catalyst is tetrasodium pyrophosphate in the range of about 0.5% to about 3%;	c. said catalyst is tetrasodium pyrophosphate in the range of about 0.5% to about 3%;
and	and
d. said stabilizer emulsifier is a high temperature stabilizer emulsifier in the range of about 0.5% to about 10%.	d. said stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension] is a high temperature stabilizer emulsifier in the range of about 0.5% to about 10%.

**Claim 5 of U.S. Patent No. 6,020,017**

5. A heat resistant milk substitute mixture comprising by weight before combining with a liquid:	5. A heat resistant milk substitute mixture comprising [including, but not limited to] by weight before combining with a liquid:
a. whey in the range of about 10% to about 45%;	a. whey in the range of about [approximately, close to, near, but not necessarily equal to] 10% to about 45%;
b. partially hydrogenated canola oil of about 10% to about 35%;	b. partially hydrogenated canola oil of about 10% to about 35%;

c. corn syrup solids of about 5% to about 30%;	c. corn syrup solids of about 5% to about 30%;
d. sugar of about 5% to about 30%;	d. sugar of about 5% to about 30%;
e. whey protein concentrate of about 1% to about 20%;	e. whey protein concentrate of about 1% to about 20%;
f. tetrasodium pyrophosphate of about 0.5% to about 3%;	f. tetrasodium pyrophosphate of about 0.5% to about 3%;
g. calcium carbonate of about 0.5% to about 3%;	g. calcium carbonate of about 0.5% to about 3%;
h. sodium caseinate of about 0.5% to about 3%;	h. sodium caseinate of about 0.5% to about 3%;
i. Mono & Diglycerides of about 0.5% to about 3%;	i. Mono & Diglycerides of about 0.5% to about 3%;
j. dipotassium phosphate of about 0.5% to about 3%;	j. dipotassium phosphate of about 0.5% to about 3%;
k. sodium silicoaluminate of about 0.2% to about 3%;	k. sodium silicoaluminate of about 0.2% to about 3%;
l. soy lecithin of about 0.1% to about 2.5%;	l. soy lecithin of about 0.1% to about 2.5%;

and

and

m. A stabilizer emulsifier in the range of about 0.5% to about 10%.

m. A stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension] in the range of about 0.5% to about 10%.

**Claim 7 of U.S. Patent No. 6,020,017**

7. A heat resistant milk substitute mixture comprising by weight before combining with a liquid:	7. A heat resistant milk substitute mixture comprising [including, but not limited to] by weight before combining with a liquid:
a. whey in the range of about 10% to about 45%;	a. whey in the range of about [approximately, close to, near, but not necessarily equal to] 10% to about 45%;
b. Partially Hydrogenated Soy Bean Oil in the range of about 10% to about 35%;	b. Partially Hydrogenated Soy Bean Oil in the range of about 10% to about 35%;
c. corn syrup solids in the range of about 5% to about 30%;	c. corn syrup solids in the range of about 5% to about 30%;
d. sugar in the range of about 8% to about 30%;	d. sugar in the range of about 8% to about 30%;
e. whey protein concentrate in the range of about 1% to about 20%;	e. whey protein concentrate in the range of about 1% to about 20%;
f. a stabilizer emulsifier in the range of about 0.5% to about 10%;	f. a stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension] in the range of about 0.5% to about 10%;
g. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;	g. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;
h. calcium carbonate in the range of about	h. calcium carbonate in the range of about 0.5% to about 3%;

0.5% to about 3%;	
i. sodium caseinate in the range of about 0.5% to about 3%;	i. sodium caseinate in the range of about 0.5% to about 3%;
j. mono & diglycerides in the range of about 0.1% to about 2.5%;	j. mono & diglycerides in the range of about 0.1% to about 2.5%;
k. vanillin in the range of about 0.1% to about 2.5%;	k. vanillin in the range of about 0.1% to about 2.5%;
l. Carrageenan Gum in the range of about 0.1% to about 2%;	l. Carrageenan Gum in the range of about 0.1% to about 2%;
m. dipotassium phosphate in the range of about 0.5% to about 3%;	m. dipotassium phosphate in the range of about 0.5% to about 3%;
n. Maltodextrin in the range of about 0.5% to about 3%;	n. Maltodextrin in the range of about 0.5% to about 3%;
o. Titanium Dioxide in the range of about 0.2% to about 3%;	o. Titanium Dioxide in the range of about 0.2% to about 3%;
p. salt in the range of about 0.05% to about 2%;	p. salt in the range of about 0.05% to about 2%;
q. sodium silicoaluminate in the range of about 0.1% to about 2.5%;	q. sodium silicoaluminate in the range of about 0.1 % to about 2.5%;

and

and

r. guar gum in the range of about 0.02% to about 2%.

r. guar gum in the range of about 0.02% to about 2%.

**Claim 10 of U.S. Patent No. 6,020,017**

10. A heat resistant milk substitute mixture comprising by weight before combining with a liquid:	10. A heat resistant milk substitute mixture comprising [including, but not limited to] by weight before combining with a liquid:
a. whey in the range of about 10% to about 45%;	a. whey in the range of about [approximately, close to, near, but not necessarily equal to] 10% to about 45%;
b. partially hydrogenated canola oil in the range of about 10% to about 35%;	b. partially hydrogenated canola oil in the range of about 10% to about 35%;
c. corn syrup solids in the range of about 5% to about 30%;	c. corn syrup solids in the range of about 5% to about 30%;
d. cocoa in the range of about 2.5% to about 20%;	d. cocoa in the range of about 2.5% to about 20%;
e. a stabilizer emulsifier in the range of about 0.5% to about 10%;	e. a stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension] in the range of about 0.5% to about 10%;
f. sugar in the range of about 20% to about 60%;	f. sugar in the range of about 20% to about 60%;
g. whey protein concentrate in the range of about 1% to about 20%;	g. whey protein concentrate in the range of about 1% to about 20%;
h. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;	h. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;

i. salt in the range of about 0.3% to about 3%;	i. salt in the range of about 0.3% to about 3%;
j. vanillin in the range of about 0.1% to about 2.5%;	j. vanillin in the range of about 0.1% to about 2.5%;
k. calcium carbonate in the range of about 0.05% to about 2%;	k. calcium carbonate in the range of about 0.05% to about 2%;
l. sodium caseinate in the range of about 0.1% to about 2.5%;	l. sodium caseinate in the range of about 0.1% to about 2.5%;
m. mono & diglycerides in the range of about 0.1% to about 2.5%;	m. mono & diglycerides in the range of about 0.1% to about 2.5%;
n. dipotassium phosphate in the range of about 0.1% to about 2.5%;	n. dipotassium phosphate in the range of about 0.1% to about 2.5%;
o. guar gum in the range of about 0.05% to about 2%;	o. guar gum in the range of about 0.05% to about 2%;
p. sodium silicoaluminate in the range of about 0.05% to about 2%;	p. sodium silicoaluminate in the range of about 0.05% to about 2%;

and

and

q. soy lecithin in the range of about 0.1% to about 2.5%.

q. soy lecithin in the range of about 0.1% to about 2.5%.

**Claim 12 of U.S. Patent No. 6,020,017**

12. A heat resistant milk substitute comprising a mixture of:	12. A heat resistant milk substitute comprising [including, but not limited to] a mixture of:
a. a non-dairy creamer;	a. a non-dairy creamer;
b. a sweetener	b. a sweetener
c. a stabilizer emulsifier	c. a stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension]

and

and

d. a catalyst to maintain ingredients in suspension after heat processing.

d. a catalyst [a substance which speeds up or slows down a chemical reaction] to maintain ingredients in suspension after heat processing.

**Claim 13 of U.S. Patent No. 6,020,017**

13. A heat resistant milk substitute as described in claim 12 wherein said catalyst is Tetrasodium Pyrophosphate.

13. A heat resistant milk substitute as described in claim 12 wherein said catalyst is Tetrasodium Pyrophosphate.

**Claim 14 of U.S. Patent No. 6,020,017**

14. A heat resistant milk substitute mixture comprising by weight before combining with a liquid:	14. A heat resistant milk substitute mixture comprising [including, but not limited to] by weight before combining with a liquid:
a. Non Dairy Creamer in the range of about	a. Non Dairy Creamer in the range of about [approximately,

15% to about 65%;	close to, near, but not necessarily equal to] 15% to about 65%;
b. Whey in the range of about 10% to about 45%;	b. Whey in the range of about 10% to about 45%;
c. Sugar in the range of about 5% to about 30%;	c. Sugar in the range of about 5% to about 30%;
d. Whey Protein Concentrate in the range of about 1% to about 20%;	d. Whey Protein Concentrate in the range of about 1% to about 20%;
e. a stabilizer in the range of about 0.5% to about 10%;	e. a stabilizer in the range of about 0.5% to about 10%;
f. Tetrasodium Pyrophosphate in the range of about 0.5% to about 3%;	f. Tetrasodium Pyrophosphate in the range of about 0.5% to about 3%;

and

and

g. Calcium Carbonate in the range of about 0.5% to about 3%.

g. Calcium Carbonate in the range of about 0.5% to about 3%.

**Claim 16 of U.S. Patent No. 6,020,017**

16. A heat resistant milk substitute mixture comprising by weight before combining with a liquid:	16. A heat resistant milk substitute mixture comprising [including, but not limited to] by weight before combining with a liquid:
a. Non Dairy Creamer in the range of about 20% to about 60%;	a. Non Dairy Creamer in the range of about [approximately, close to, near, but not necessarily equal to] 20% to about 60%;
b. whey in the range of about of about 10% to about 45%;	b. whey in the range of about of about 10% to about 45%;
c. sugar in the range of about of about 5% to about 30%;	c. sugar in the range of about of about 5% to about 30%;
d. whey protein concentrate in the range of about 2% to about 10%;	d. whey protein concentrate in the range of about 2% to about 10%;
e. a stabilizer emulsifier in the range of about 0.5% to about 10%;	e. a stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension] in the range of about 0.5% to about 10%;
f. Titanium Dioxide in the range of about 0.5% to about 3%;	f. Titanium Dioxide in the range of about 0.5% to about 3%;
g. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;	g. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;
h. calcium carbonate in the range of about 0.5% to about 3%;	h. calcium carbonate in the range of about 0.5% to about 3%;

and

and

i. vanillin in the range of about 0.02% to about 3%.

i. vanillin in the range of about 0.02% to about 3%.

**Claim 18 of U.S. Patent No. 6,020,017**

18. A heat resistant milk substitute mixture comprising by weight before combining with a liquid:	18. A heat resistant milk substitute mixture comprising [including, but not limited to] by weight before combining with a liquid:
a. Non Dairy Creamer in the range of about 5% to about 35%;	a. Non Dairy Creamer in the range of about [approximately, close to, near, but not necessarily equal to] 5% to about 35%;
b. sugar in the range of about 15% to about 65%;	b. sugar in the range of about 15% to about 65%;
c. whey in the range of about 10% to about 45%;	c. whey in the range of about 10% to about 45%;
d. Cocoa in the range of about 2% to about 10%;	d. Cocoa in the range of about 2% to about 10%;
e. a stabilizer emulsifier in the range of about 0.5% to about 10%;	e. a stabilizer emulsifier [a substance which blends particles together in a liquid and keeps them in suspension] in the range of about 0.5% to about 10%;
f. whey protein concentrate in the range of about 2% to about 10%;	f. whey protein concentrate in the range of about 2% to about 10%;
g. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;	g. tetrasodium pyrophosphate in the range of about 0.5% to about 3%;
h. salt in the range of about 0.02% to about 4%;	h. salt in the range of about 0.02% to about 4%;
i. vanillin in the range of about 0.01% to about 4%;	i. vanillin in the range of about 0.01% to about 4%;

and

and

j. calcium carbonate in the range of about 0.01% to about 4%.

j. calcium carbonate in the range of about 0.01% to about 4%.

### Glossary of Terms for Claims in U.S. Patent No. 6,020,017

CLAIM TERM	DEFINITION
comprising	including, but not limited to
about	approximately, close to, near, but not necessarily equal to
dry weight	weight of the whey with all liquid removed
a catalyst	a substance which speeds up or slows down a chemical reaction

a stabilizer emulsifier      a substance which blends particles together in a liquid and keeps them in suspension

S.D.Cal.,2004.

Mingione v. U.S. Food Corp.

Produced by Sans Paper, LLC.