Intellectual Property Office

BL O/0882/26

28 September 2026

**PATENTS ACT 1977**

| | |
|---|---|
| APPLICANT | Simon Wright |
| ISSUE | Whether patent application GB2201911.1 complies with sections 1(1)(b) and 14(3) of the Patent Act 1977 |
| HEARING OFFICER | Ilya Gribanov |

---

**DECISION**

## Introduction

1 Patent application GB2201911.1 entitled 'Wine art' was filed on 14 February 2022 and published as GB 2615587 A on 16 August 2023. The application does not claim priority from any other document. The section 20 date of the application is 14 August 2026.

2 The first examination report, dated 23 December 2024, objected to claims 1, 2, 11, 12 & 14 for lacking novelty based on a single citation and objected to the remaining claims for lacking an inventive step. Clarity objections were raised concerning claims 12 & 14.

3 In response to this report the main claims were amended to include the features of claim 7 as filed.

4 There have been several rounds of correspondence between the applicant and the examiner since. I note the examiner has fully updated the search, with the initially cited document remaining the main document and other documents cited to support the examiner's construction of the skilled person's common general knowledge. The examiner and the applicant were unable to reach agreement that the invention exhibited an inventive step or if what is claimed is clear.

5 The examiner offered the applicant the opportunity to request a decision by a Hearing Officer in their letter reporting a telephone conversation dated 6 May 2026 and informed the applicant that the application may be passed to a Hearing Officer for a decision on the papers if such a request was not forthcoming and further amendments or arguments were filed. The applicant responded with further observations in a letter dated 7 May 2026 but made no request for a hearing. The matter has therefore come before me to decide based on the papers on file.

6 In the prehearing report the examiner has restated their objections relating to inventiveness and reframed their clarity objections to relate to the sufficiency of the claims (which was previously considered in earlier examination reports).

7 I note that the applicant has agreed to amend the description, relating to non-metric units and which examples are within the scope of the claims, but by mutual agreement between the applicant and the examiner – these amendments have been deferred until the main objections have been addressed.

8 The matter before me is whether the claimed invention has an inventive step over the prior art, whether the invention is sufficient, and the clarity of the claimed invention.

**The invention**

9 The application concerns a composition for use in artworks, as well as the manufacture of said composition, and its use in creating artworks. In particular, the composition comprises a mixture of red colouring (exemplified as a red acrylic or oil paint, pigment, dye and/or tint) with red wine (an alcoholic drink made from fermented red or dark grapes). Additional colourings (e.g. blue, black and/or brown) may be added to the composition. The ratio of red colouring to red wine can be controlled (and is exemplified as 4:1, 3:1, 2:1, and 1:1 in the originally filed description) so as to achieve a desired consistency, or viscosity in relation to a particular desired effect, such as its a colour, or ensuring the composition has a suitable viscosity for being splattered, or painted, or sprayed onto a surface such as a canvas, metal and/or wood. By way of an example, the composition may be burgundy in colour and comprise burgundy wine, resulting in an artwork that has the artistic flair of being made with, or rather contain, the very subject that the composition is used to depict.

**The claims**

10 The claims currently under consideration were filed as amendments to the application on 20 May 2025. They consist of three independent claims and a further eight dependent claims. The independent claims read as follows:

> 1. *A composition comprising red colouring and red wine, wherein the ratio of red colouring (RC) to red wine (RW) is from 3-2:1.*
> 9. *A method of making a composition for use in an artwork, the method comprising mixing red colouring and red wine, wherein the ratio of red colouring (RC) to red wine (RW) is from 3-2:1.*
> 10. *A method of creating an artwork, the method comprising applying a composition according to any of claims 1 to 8 to a surface.*

11 Compared to the as filed versions, these claims differ by the inclusion of the specific ratio of red colouring to red wine. This particular ratio range was required by dependent claim 7 of the application as originally filed.

**The Law**

12 Section 1(1) of the Act states:

> *1(1) A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say –*
>
> *(a) the invention is new;*
>
> *(b) it involves an inventive step*;

13 Sections 2(1) & 2(2) of the Act state:

> *2(1) An invention shall be taken to be new if it does not form part of the state of the art.*
>
> *2(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.*

14 Section 3 of the Act states:

> *3 An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).*

15 Section 14(3) of the Act states:

> *14(3) The specification of an application shall disclose the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.*

16 Section 125(1) of the act states:

> *125(1) For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.*

17 In addition to the statute, in *EPAI*[1] the Supreme Court confirmed that the approach laid out in *Pozzoli*[2] remains a legitimate method for testing inventiveness. That approach is:

> *(1)(a) Identify the notional "person skilled in the art"*
>
> *(1)(b) Identify the relevant common general knowledge of that person;*
>
> *(2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;*
>
> *(3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claims as construed;*
>
> *(4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?*

**Claim construction**

18 My starting point for assessing the invention lies in construing the claims. The claims are to be construed in a purposive manner, through the eyes of the skilled reader, in light of the disclosure of the description, as set out in section 125 of the Act and following the established principles of UK patent law. I therefore need to start by identifying this skilled person.

19 The examiner has construed the relevant skilled person to be an artist skilled in formulating compositions such as paint for producing artwork. There appears to be no disagreement from the applicant with this construction. Although the examiner's construction was for the purpose of assessing inventiveness, I am content that this is a reasonable construction of the skilled person for the assessment of the invention.

20 Claim 1 requires *a composition*. Based on the detail provided in the description I believe the skilled person would construe this as a combination (a mixture for example) of the required integers. There was no disagreement over this part of the claim between the examiner and the applicant.

21 The composition of claim 1 is required to comprise a *red colouring*. The description further provides that "colouring" can comprise acrylic or oil paint, pigment, dye and/or tint. Whilst these are given as specific examples, in principle there is an extensive list of integers extending beyond those described in the application as filed, which the skilled reader would recognise as a *red colouring* (by way of background knowledge only, these may include dry marking materials, structural minerals, natural secretions, etc), however no observations relating to this were raised by the examiner. I believe the skilled person would consider a "colouring" to be limited to artistic materials like those described in the application as filed, as well as any others that are commonly used in the art. In other words, I believe the skilled reader would

---

[1] *Emotional Perception AI Limited v Comptroller General of Patents, Designs and Trade Marks* [2026] UKSC 3

[2] *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

have no difficulty in construing the word “colouring” and understand that they have a range of commonly used materials available at their disposal for use as a suitable colouring. However, the skilled reader would not consider these to be limited to just liquids or emulsions having a specific viscosity or consistency.

22 The description clearly states that “red” colouring means a red colour at the long wavelength end of the visible spectrum of light, next to orange and opposite violet, usually with a dominant wavelength of approximately 625-740 nanometres.

23 The composition of claim 1 further requires *red wine*. The description provides examples of what does and does not constitute a red wine, and the skilled person would be able to construe this part of the claim. In particular, red wine is described as an alcoholic drink made from fermented red or dark grapes, which is preferably still and not fizzy or sparkling, with many particular examples of wines from the old world and the new world being provided, including fortified wine such as port, but explicitly excludes rosé wine.

24 Finally, claim 1 requires a specific *ratio of red colouring (RC) to red wine (RW) is from 3-2:1*, i.e. between 3:1 and 2:1, wherein the red colouring is in the excess. This aspect of the claim resulted in a disagreement between the applicant and the examiner. Previous objections by the examiner (now covered under sufficiency in the prehearing report) suggested that this was unclear as the originally filed specification did not state what this was a ratio of (weight or volume). In their letter dated 20 May 2025 the applicant countered that the claim was clear, with both possibilities covered by the claim.

25 I agree with the applicant on this point. No specific means of measuring the ratio are claimed (or described), and the skilled reader attempting to understand and work the invention would construe this to encompass either a volumetric ratio or a weight ratio. Both of those measures would be readily available to them, and usable by them using common measurement containers and/or scales. On a related point, I agree with the examiner’s conclusion in their prehearing report that other means of measurement (such as moles) exist in principle, but the skilled person in question is not expected to construe claim 1 to extend to such means of measurement.

26 I therefore have no difficulty in assessing how the skilled reader would construe the scope of claim 1 as currently amended. My construction of claims 9 & 10 as currently amended, is based on the same reasoning as that set out above.

**Inventive Step**

27 My initial analysis of the inventiveness of the claimed invention will be based on claim 1.

<u>Steps 1(a) & (b): Identify the notional person skilled in the art and identify the relevant common general knowledge of that person</u>

28 As noted above, the examiner’s reports identify the skilled person to be an artist skilled in formulating compositions such as paints for producing artwork. The applicant appears to agree with this construction of the skilled person, and I agree that such a person is the correct skilled person when considering this application.

29 In the prehearing report the examiner identified the skilled person's common general knowledge to include standard formulations used in art and methods of creating and using them, including the use of different solvents. They also identify that the skilled person would routinely mix paint-like formulations and experiment with materials for different artistic requirements.

30 The examiner has presented four citations to support their construction of the skilled person's common general knowledge, these are:

D2 Loeil, 2020, "DIY Foil ART & Prints – How to use foil into your artworks and more?", loeilart.com, Available from https://loeilart.com/blogs/tutorials/diy-foil-art-prints-how-to-use-foil-into-your-artwork-and-more

D3 The navage patch, 2016, "Cork Art for the Cork Dork", thenavagepatch.com, Available from https://www.thenavagepatch.com/cork-art-for-the-cork-dork

D4 Just Paint, 21 January 2019, "How much water can you safely add to acrylic paint?", justpaint.org, Available from https://justpaint.org/how-much-water-can-you-safely-add-to-acrylic-pain/

D5 Makoccino, 19 October 2019, "How to CONTROL WATER in your watercolor painting! Master PAINT to WATER ratio", YouTube.com, Available from: https://www.youtube.com/watch?v=_oFOgr7T8qE&t=130s

31 The examiner has utilised D2 and D3 to demonstrate that artists are familiar with the use of wine corks, foil and the like as a material for use in artistic creations *per se*. D4 and D5 are used to demonstrate that artists are also familiar with diluting painting mediums at various ratios to modify the final composition *per se*. In both examples water is used to dilute the painting medium. The range of ratios of painting medium to water in both examples exceed 3:1 to 2:1 parts painting medium to water. D5, discusses paint to water ratio when it comes to mixing or preparing the paint and discloses that a lot of water with a little bit of paint can be used to keep the colour light, or a lot of paint with a little bit of water can be used to keep the colour as saturated and dark as possible, before proceeding to disclose a spectrum of exemplified possibilities in between those extremes, without specifying any particular numeric ratios of paint to water. D4 explicitly exemplifies numeric ratios of acrylic (colouring) to water (dilutant) in the range between 3:1 and 1:100 (and so includes the range of 3:1 – 2:1 amongst other ranges).

32 The applicant's remarks in their letter of 7 May 2026 agree with parts of the examiner's construction of the skilled person's common general knowledge, namely that the skilled person would make different formulations for artworks. In my view, the applicant's reasoning against D2-D5 does not relate to their relevance to the skilled person's common general knowledge as such, but rather to the inventiveness of the claims in light of these documents (as standalone citations). Specifically, the applicant reasons that it would not be obvious to replace the water disclosed in these citations with wine. The applicant has made no observations regarding the examiner's consideration of the skilled person's common general knowledge in relation to D2 & D3.

33 I agree with the examiner's construction of the skilled person's common general knowledge. The skilled person would know of the standard formulations used in art and methods of creating and using them, including the use of different solvents. As demonstrated by D4 and D5 they would also know that painting medium (colouring) could be diluted with commonly used solvents (for example water) from situations where there is an excess of paint to those where there is an excess of water. I do take on board the applicant's observations regarding replacing water with wine *per se*. Using wine as a dilutant for paint is known, and so is using red wine as a dilutant for red colouring (as exemplified in D1, for example). However, Common General Knowledge is narrower than the entire state of the art. Although experimental artists have experimented with mixing paint and wine, this is not considered to form part of a skilled person's mental toolkit or background knowledge that makes the skilled person skilled. In essence, using wine as a dilutant for paint is information that is indeed public, but not generally adopted or accepted in the field, and so is considered not to be a part of the skilled person's Common General Knowledge *per se*. However, the skilled person (an artist) would routinely mix paint-like formulations and experiment with materials for different desired artistic requirements – it is, after all, what makes an artist skilled in their field.

Step 2: Identify the inventive concept of the claim in question or if that cannot readily be done, construe it

34 In light of my construction observations above, I have identified the inventive concept to be a composition for use in artworks comprising red colouring and red wine, with a colouring to wine ratio (by volume or weight) being between 3:1 and 2:1.

Step 3: Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed

35 The examiner identified the following citation as the matter forming the state of the art:

D1 MyHarto, 13 June 2017, "How to paint using only red wine o_O", YouTube.com, Available from https://youtu.be/AHzza5qkX7A

36 The citation shows artists mixing powdered dyes with various wines and using the mixtures on surfaces to make artworks. This includes mixing a red dye (red colouring) with a red wine, as was required by the originally filed claim 1.

37 The applicant and the examiner agree that this differs from claim 1 (as currently amended), because it does not disclose the red colouring and red wine being at a specific ratio of 3-2:1. I too agree with this assessment.

Step 4: Viewed without any knowledge of the alleged invention as claimed, determine whether those differences constitute steps which would have been obvious to the person skilled in the art

38 The examiner alleges that the skilled person, starting with the teaching of D1 and armed with their Common General Knowledge, would consider it routine to vary the ratio of colouring to wine to achieve different colour intensities and/or achieve

different viscosity or consistency of the composition, and that in doing so the skilled person would arrive at the claimed ratio of colouring to wine whilst performing routine modification of the composition disclosed in D1.

39 In their letter of 7 May 2026, the applicant concedes that the skilled person might vary the ratio of the components of the composition disclosed in D1, but contests that the skilled person would arrive at the specific range required by the claim, reasoning that this range was chosen (i.e. selected) to give the composition (i.e. the invention) a particularly good consistency and thickness.

40 As noted by the examiner in the prehearing report of 5 June 2026, the applicant's reasoning is that the particular selection of the ratio of red colouring to red wine is inventive over the prior art, because it confers a technical contribution and so should be considered as a selection invention.

41 The relevant guidance for considering selection inventions is set out in *Generics v Yeda*[3]. In said judgment, LJ Floyd, when referring to an earlier judgment in *Dr Reddy's Laboratories v Eli Lilly*[4], noted that the Court of Appeal was concerned with the rules that apply where a patent is sought for a compound or class of compounds which are a selection from a broader class disclosed by a prior document, and summarised the approach as being: "*Has the patentee made a novel non-obvious technical advance and provided sufficient justification for it to be credible? This is the basis of all the reasoning - see e.g. [2.4.2] of AgrEvo. A selection which makes a real technical advance in the art is patentable*". LJ Floyd further adds that the basis of the rule against "arbitrary" selection as being found in the guiding principle "*is there a real technical advance?*"[5].

42 LJ Floyd further stated that the position is summarised in the following way[6]:

*i) Article 56 of the EPC is in part based on the underlying principle that the scope of the patent monopoly must be justified by the patentee's contribution to the art;*

*ii) If the alleged contribution is a technical effect which is not common to substantially everything covered by a claim, it cannot be used for the purpose of judging obviousness;*

*iii) In such circumstances the claim must either be restricted to the subject matter which makes the technical contribution, or a different contribution common to the whole claim must be found;*

*iv) A selection from the prior art which is purely arbitrary and cannot be justified by some useful technical property is likely to be held to be obvious because it does not make a real technical advance;*

---

[3] *Generics [UK] LTD (t/a Mylan) v Yeda Research and Development co. LTD & ANOR* [2013] EWCA Civ 925
[4] *Dr Reddy's Laboratories (UK) Ltd v Eli Lilly and Co Ltd* [2010] RPC 9
[5] *Generics [UK] LTD (t/a Mylan) v Yeda Research and Development co. LTD & ANOR* [2013] EWCA Civ 925, paragraphs 47-48.
[6] *ibid*, paragraph 49

*v) A technical effect which is not rendered plausible by the patent specification may not be taken into account in assessing inventive step;*

*vi) Later evidence may be cited to support a technical effect made plausibly by the specification;*

*vii) Provided the technical effect is made plausible, no further proof of the existence of the effect is to be demanded of the specification before judging obviousness by reference to the technical effect put forward.*

43 With regard to point i, the applicant (in their letter of 7 May 2026), has alleged the contribution of the specifically claimed ratio to be:

> "…*a particularly good consistency and thickness, especially for certain types of paints (such as acrylics). This is almost a perfect consistency, because the resulting composition is not too runny, nor is it too thick. It is actually an ideal consistency for application, say with a palette knife, to certain artworks (such as canvas). This is the reason that specific and narrow ratio has been chosen."*

44 I respectfully note that whilst reference to a palette knife is made in the letter, the application as originally filed is silent on palette knife application. However, I do note that the originally filed description nonetheless describes other modes of application (e.g. applying a composition using a paintbrush to a canvas as per example 1).

45 Point ii is focused on if the alleged contribution of the technical effect is common to substantially everything covered by the claim.

46 The description does not render plausible any other technical contribution that is common to the entirety of the claim. Thus, if the alleged contribution is a technical effect the claims will need to be limited to subject matter which makes that contribution in order to satisfy point iii.

47 Regarding point iv, the applicant has described a technical effect that they believe supports the selection that is currently under consideration. The merits of the selection will therefore be judged on this alleged technical effect.

48 Point v asks if the technical effect is rendered plausible by the specification. The consistency of the composition is linked to the claimed ratio in the following sections of the applications description:

*"The ratio of red colouring (RC) to red wine (RW) is suitably 4:1 to 1:1, preferably from 3:1 to 2:1. The ratio can be important for certain artworks. The consistency, or viscosity, needs to be appropriate to get the right effect. If the paint is too thick then it may not be able to be splattered effectively. If the composition is too watery, or the wrong consistency, it may not give the correct colour or artistic effect desired."*

49 Example 1 of the description is the only example that falls within the scope of claim 1. There is no indication of the consistency of the composition of this example, other than it being applied with a paintbrush.

50 While the specification links the claimed ratio to the consistency of the composition (as well as a broader ratio of 1:4 – 1:1, for example), I see nothing that renders *a particularly good consistency* using specifically the claimed ratio of 3-2:1 of any red colouring to any red wine being made plausible by the originally filed application.

51 A consistency and viscosity is dependent on what is used as a "red colouring" and what is used as a "red wine". As discussed above, the skilled person would construe *a red colouring* to encompass a very broad array of artistic materials having a very broad variety of different consistencies and thicknesses. Similarly, the thickness and consistency of *a red wine* will inevitably (and significantly) vary from wine to wine, particularly when fortified red wines such as port are taken into account, which the originally filed description explicitly mentions as examples of red wine. Purely by way of background knowledge, it is noted that fortified wines can be viscous and described as syrupy, e.g. due to high sugar and alcohol content.

52 In my mind, the selection of a particular colouring, or a particular wine, or which particular ratio measure (e.g. volume or weight) is used would affect the alleged effect to be obtained only in some embodiments of claim 1, or alternatively some compositions may achieve this result outside of the 3:1 to 2:1 range, particularly if a thickener (described as an optional artistic material on page 1, 6$^{th}$ paragraph, final sentence) is used in the composition and/or any of the *other* paint is added in addition to the red colouring (e.g. blue, black and/or brown paint *vis-à-vis* claims 6-7 currently held on file).

53 In other words, it would appear that combinations of some red colouring and some red wine alone, used in the required proportion may not achieve the desired effect, while combinations of other colourings and wines (particularly when used with a thickener) might. For example, it is not clear how the effect of using a 2:1 ratio without an optional thickener or other paints would differ from e.g. using a ratio of 1:1 with the optional thickener and/or blue paint.

54 In other words, and following the summary of LJ Floyd: "*Has the patentee made a novel non-obvious technical advance and provided sufficient justification for it to be credible? This is the basis of all the reasoning…. A selection which makes a real technical advance in the art is patentable*", I find that selection of the particular 3-2:1 ratio of any red colour to any red wine would amount to an "arbitrary" selection (i.e. an arbitrary numeric ratio of any red colouring to any red wine, irrespective of whether it is measured by weight or volume, and irrespective of the inherent physical properties, such as viscosity, density etc of either one or both of the red colouring or red wine, and/or irrespective of the presence or absence of the other optional integers of the composition such as paints of other colours and/or a thickener), because said ratio would not necessarily achieve the desired consistency or viscosity described in the originally filed application, because said consistency would be subject to a lot more variables than the mere proportion of any red colouring to any red wine.

55 Furthermore, the effect itself is considered to be entirely obvious and expected, rather than amount to a novel non-obvious technical advance. Put another way, the skilled person is expected to appreciate that although red wine is indeed an unconventional (albeit a known) solvent for a red colouring (or other colours), wine is mostly water (by applicant's own admission, it has ~95% water content), and whilst I

agree with the applicant that wine would inevitably contain other components such as alcohol, chemicals resulting from fermentation, colourings, tannins, etc that are not expected to be found in water *per se*, the skilled person (an artist), armed with their Common General Knowledge, would naturally appreciate that increasing the content of a colouring to the dilutant (wine) would, similarly to how it would in the case of another dilutant (water), lead to forming a thicker and more viscous composition, while increasing the content of dilutant relative to colouring would achieve the opposite effect. The skilled person (an artist) would naturally be motivated to experiment with wine and colouring proportions in course of routine workshop development, so as to experiment with different colour intensities, as well as viscosities of the composition (e.g. depending on which particular colouring and which particular wine, and which particular mode of application available to them is used). I find that selection of the particular ratio of 3-2:1 does not offer a technical advance in the art, but is rather an arbitrary selection from a broader range.

56 Having considered the alleged technical effect, I must conclude that the skilled person, armed with the common general knowledge that painting mediums can be diluted by solvents at varying levels from an excess of painting medium to an excess of solvent, would consider it obvious that the amount of wine used in D1 could be varied in a similar manner to how the amount of other solvents, such as the amount of water would be varied. Through the course of this routine modification of the composition, they would work within the claimed ratio range of 3-2:1 as an obvious option available to them. Therefore, in answer to Step 4 of *Pozzoli*, I conclude that the difference is obvious to the person skilled in the art, because it amounts to an arbitrary selection, and so the claimed invention does not meet the requirements of Section 1(1)(b) of the Patents Act 1977.

57 As the technical effect of the particularly selected ratio has not been made plausible by the as filed specification, I have not needed to assess the relevance of points vi and vii.

58 I will now consider the other independent claims. The same reasoning may be applied to the method described in claim 9, such that this claim too lacks the required inventive step. D1 discloses applying the composition to a surface, such that claim 10 is obvious.

59 D1 discloses the use of a powdered pigment, such that claim 2 is obvious. The skilled person would also recognise that the teachings of D1 could be applied to other painting mediums and apply their common general knowledge to using such compositions.

60 Claims 3-5 & 8 describe the red wine based on the origin of the wine. D1 already discloses the use of different wines. No hitherto unknown technical effect is made plausible using the different wines claimed. It would therefore be obvious for the skilled person to try using other wines to those shown in the video.

61 Claims 6 & 7 describe the composition wherein colours other than red are also added. Mixing paint colours to create a desired final colour is well known in the field of art. The skilled person would know that this could be applied to the composition of D1, such that claims 6 & 7 lack the required inventive step.

62 Claim 11 describes a method of creating an artwork which includes cork, a wine label, foil or bottle cage (or any part thereof) in addition to the composition of red colouring and red wine. The skilled addressee would be familiar with mixed material artworks (as exemplified by D2 and D3) as so consider such additions to be obvious.

**Sufficiency**

63 Having found the claims to not be inventive I do not need to consider sufficiency of disclosure of the application in detail. However, my construction of the claims suggests that the skilled reader would be able to follow the teachings of the application and be able to produce the composition required by the claims. The properties of the composition would differ depending on the specific red colouring and red wine used to make them, but I do not believe this to have an impact on sufficiency.

**Clarity**

64 Having found the independent claims to be clear but not be inventive, I do not need to consider clarity in further detail. However, for completeness, I note that the examiner objected to the claims defining the wine by where it was from (claims 3-5 & 8). I agree with the applicant that the skilled person would be able to ascertain where a wine was from and so these claims are clear in this respect.

65 I do however note that claim 5 is not compatible with claim 4; it is not clear how a wine can be from different countries at the same time.

66 Claim 11 is also unclear as it is dependent upon itself.

**Conclusion**

67 I find that claims 1 to 11 lack the required inventive step as required by section 1(1)(b) of the Patents Act 1977. I have considered the application as a whole and I do not see any saving amendments available to the applicant. Therefore, I refuse the application under section 18(3).

**Appeal**

68 Any appeal must be lodged within 28 days after the date of this decision.

**ILYA GRIBANOV**

Patent Examination Group Head