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Paper 62
Entered: February 10, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CONOPCO, INC. dba UNILEVER,
Petitioner,

v.

THE PROCTER & GAMBLE COMPANY,
Patent Owner.

Case IPR2013-00509
Patent 6,451,300 B1

Before LORA M. GREEN, GRACE KARAFFA OBERMANN, and RAMA G. ELLURU, *Administrative Patent Judges.*

OBERMANN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.C.S. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Conopco, Inc. dba Unilever ("Petitioner"), filed a Petition requesting an *inter partes* review of claims 1–25 of U.S. Patent No. 6,451,300 B1 (Ex. 1001, "the '300 patent"). Paper 2 ("Pet."). The Procter & Gamble Company ("Patent Owner") filed a Preliminary Response. Paper 8. In a Decision on Institution (Paper 10, "Dec."), we instituted trial on three grounds of unpatentability as set forth in the chart below.

Reference	Basis	Claims Challenged
Kanebo[1]	§ 102(b)	1, 2, 4, 5, 11, 13, 16, 17, and 20
Kanebo	§ 103	3, 18, and 25
Evans[2]	§ 103	1, 12, 16, 19, and 24

Within the time periods allowed by our rules, Patent Owner filed a Response and Petitioner filed a Reply. Paper 35 ("PO Resp."); Paper 45 ("Reply"). The parties also fully briefed Patent Owner's Motion to Exclude Evidence. Paper 54 ("PO Mot. Ex."); Paper 55 ("PO Mot. Ex. Resp."); Paper 56 ("PO Mot. Ex. Reply").

A combined oral hearing was conducted on November 5, 2014, in this proceeding and IPR2013-00505, which relates to U.S. Patent No. 6,974,569 B2, ("the 505 Proceeding"), and involves the same parties. Paper 60 ("Tr."). Concurrently herewith, we issue a Final Written Decision in the 505 Proceeding.

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[1] Kanebo, JP 9-188614 (July 22, 1997) (English translation) (Ex. 1006).

[2] Evans, WO 97/14405 (Apr. 24, 1997) (Ex. 1010).

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons set forth below, we determine that Petitioner has demonstrated, by a preponderance of the evidence, the unpatentability of claims 1–5, 11–13, 16–20, 24, and 25. Specifically, a preponderance of the evidence demonstrates that:

(1) claims 1, 2, 4, 5, 11, 13, 16, 17, and 20 are anticipated by Kanebo under 35 U.S.C. § 102(b);

(2) claims 3, 18, and 25 are unpatentable over Kanebo under 35 U.S.C. § 103; and

(3) claims 1, 12, 16, 19, and 24 are unpatentable over Evans under 35 U.S.C. § 103.

B. Related Proceedings

The '300 patent is the subject of co-pending district court litigation initiated after the filing of the Petition. *See Procter & Gamble Co. v. Conopco, Inc.*, 1:13-cv-00732-TSB (S.D. Ohio) (filed Oct. 10, 2013). Petitioner also filed a second petition seeking *inter partes* review of claims 6–10, 14, 15, and 21–23 of the '300 Patent, which we denied. IPR2014-00507, Paper 17 (denying review).

C. The '300 Patent

The '300 patent is directed to a shampoo composition and method for providing a combination of anti-dandruff efficacy and hair conditioning. Ex. 1001, 2:20–22. According to the '300 patent specification,

> "[t]hese shampoos compositions comprise: (A) from about 5% to about 50%, by weight, of an anionic surfactant; (B) from about 0.01% to about 10%, by weight, of a non-volatile conditioning agent; (C) from about 0.1% to about 4%, by weight, of an anti-dandruff particulate; (D) from about 0.02% to about 5%, by weight of the

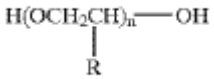
> composition, of at least one cationic polymer; (E) from 0.005% to about 1.5%, by weight, of a polyalkylene glycol; and (F) water."

Id. at 2:22–30. The specification further defines the polyalkylene glycol. *Id*. at 2:30–33. The specification also sets forth five examples of the claimed shampoo composition. *Id*. at 31:50–33:45. The specification describes a method for applying the shampoo to the hair and scalp, which preferably has been wetted with water, in an amount that is effective to confer anti-dandruff efficacy and hair conditioning; the shampoo thereafter is rinsed off. *Id*. at 2:34–37, 31:24–28.

D. Illustrative Claim

The independent claims—claims 1 and 19—specify a shampoo composition comprising an anionic surfactant, a non-volatile conditioning agent, an anti-dandruff particulate, a cationic polymer, and a polyalkylene glycol. Weight-percent ranges are specified for the components.

Claim 1, reproduced below, is illustrative of the claimed subject matter.

> 1. A shampoo composition comprising:
> a) from about 5% to about 50%, by weight of the composition, of an anionic surfactant;
> b) from about 0.01% to about 10%, by weight of the composition, of a non-volatile conditioning agent;
> c) from about 0.1% to about 4%, by weight of the composition, of an anti-dandruff particulate;
> d) from about 0.02% to about 5%, by weight of the composition, of at least one cationic polymer;
> e) from 0.005% to about 1.5%, by weight of the composition, of a polyalkylene glycol corresponding to the formula:
>
> 
>
> i) wherein R is selected from the group consisting of hydrogen, methyl and mixtures thereof;

ii) wherein n is an integer having an average value from about 1,500 to about 120,000; and

f) water.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review proceeding, we give claim terms in unexpired patents their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Under that standard, we assign claim terms their ordinary and customary meaning, as understood by a person of ordinary skill in the art, in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998).

The independent claims—claim 1 and 19—specify a shampoo composition comprising each required ingredient in an amount that falls within specified weight-percent ranges. Neither party advances a special meaning for any claim term. Claims 13 and 19 require a "zinc salt of 1-hydroxy-2-pyridinethione." Petitioner argues, and Patent Owner does not contest effectively, that the terms "zinc salt of 1-hydroxy-2-pyridinethione" and "zinc pyrithione" interchangeably refer to the same chemical component. Pet. 5 (citing Ex. 1001, 16:55–59, 32:30–51 & n.4; Ex. 1003 ¶ 17); *see generally* PO Resp. On this record, we construe each claim term according to its ordinary and customary meaning, consistent with the specification, and determine that no term needs further interpretation for the purpose of rendering this Final Written Decision.

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