

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*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

On February 26, 2014, Conopco Inc., dba Unilever (“Petitioner”) filed a request for rehearing (Paper 12, “Rehearing Req.”) of our decision denying *inter partes* review (Paper 10, “Dec.”) of claims 6, 14, and 15 of U.S. Patent No. 6,451,300 B1 (Ex. 1001, “the ’300 patent”). The petition (Paper 2, “Pet.”) challenged claims 1-25 of the ’300 patent. We determined that the information presented, at the preliminary stage of this proceeding, establishes a reasonable likelihood that Petitioner would prevail at trial with respect to claims 1-5, 11, 13, 16-20, 24, and 25 of the ’300 patent. We further determined, however, that the information does not show sufficiently that there is a reasonable likelihood that Petitioner would prevail at trial with respect to claims 6-10, 14, 15, and 21-23. Accordingly, we declined to institute trial as to those claims.

Petitioner’s request for rehearing is limited to our decision declining to institute trial with respect to claims 6, 14, and 15 of the ’300 patent. For the reasons that follow, we deny the request for rehearing.

ANALYSIS

When considering a request for rehearing of a decision on a petition, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315-16 (Fed. Cir. 2000). The party requesting rehearing bears the burden of showing that the decision should be modified, and “[t]he request must specifically identify all

matters the party believes the Board misapprehended or overlooked.” 37 C.F.R. § 42.71(d).

Petitioner seeks rehearing of the Board’s denial of *inter partes* review of (1) claim 6 as obvious over Kanebo (JP 9-188614 (July 22, 1997) (English translation) (Ex. 1006); and (2) claims 14 and 15 as obvious over Kanebo or Evans (WO 97/14405 (Apr. 24, 1997) (Ex. 1010)) in view of Cardin (US 5,104,645 (Apr. 14, 1992) (Ex. 1014)). Rehearing Req. 4-7. Petitioner contends that legal errors made in connection with those grounds resulted in an abuse of discretion. *Id.* at 1. We address those grounds in turn.

Denial of Review of Claim 6 as Obvious over Kanebo

Claim 6 requires, *inter alia*, a guar derivative having “a molecular weight from about 50,000 to about 700,000.” Petitioner argues that claim 6, and in particular, the limitation pertaining to the molecular weight of the guar derivative, “would have been obvious over the disclosure of Kanebo alone, in view of the general knowledge in the art.” Rehearing Req. 3-5. Petitioner directs us to no disclosure or suggestion in Kanebo of a guar derivative having a molecular weight that falls within the range specified in claim 6. *Id.* Petitioner directs us to Bartolo for a teaching of such a guar derivative, but contends that “it was improper for the Board to require that the Petition articulate a specific reason to combine the teaching of the sole reference (Kanebo) with references referred to simply for establishing the general knowledge in the art.” *Id.* at 4.

That contention falls short of establishing an abuse of discretion. “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007). Critically lacking is

any evidence that Kanebo suggests a shampoo composition formulated with a cationic guar derivative that satisfies the molecular weight limitation of claim 6. On this record, Petitioner does not show sufficiently that denying *inter partes* review of claim 6, based on obviousness over Kanebo alone, represents an abuse of discretion.

*Denial of Review of Claims 14 and 15 as
Obvious over Kanebo or Evans in view of Cardin*

Claim 14 relates to an anti-dandruff component “in platelet particle form,” whereas claim 15 relates to an anti-dandruff particulate having an “average particle size of about 2.5 μm .” As to claims 14 and 15, we determined that “Petitioner offers conclusory argument regarding the general feasibility of selecting elements from the disclosure of multiple prior art references, without articulating an adequate reason why a skilled artisan would have thought to incorporate the elements required by the claims.” Dec. 15-16 (citation omitted).

Petitioner repeats in the request for rehearing essentially the same argument that was raised in the Petition, purporting to establish a reason to combine the teachings of Kanebo or Evans and Cardin. *Compare* Rehearing Req. 6-7 with Pet. 51-52. That argument is no more persuasive on the second telling. Cardin’s use of the anti-dandruff component in platelet form, and of a certain particle size, in combination with “a group of specific synergizers in a shampoo matrix” is not adequately explained. Rehearing Req. 7; Pet. 51-52. In that regard, Petitioner does not identify the “synergizers” in Cardin’s composition, much less establish a reason why a skilled artisan would have been led to combine such synergizers (and, thus, the anti-dandruff particulate in the specified form or size) in the shampoo composition of Kanebo or Evans. On this record, Petitioner does not

Case IPR2013-00509
Patent 6,451,300 B1

show sufficiently that denying *inter partes* review of claims 14 and 15 represents an abuse of discretion.

CONCLUSION

Petitioner's request for rehearing is *denied*.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.