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09/558,447

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Case 7544M

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :
David S. Dunlop :
Susan M. Guskey :
Vicente E. Leyba :
Douglas A. Royce :
Serial No. 09/558,447 :
Confirmation No. 9221 : Group Art Unit 1615
Filed April 25, 2000 : Examiner P. McQueeney
For ANTI-DANDRUFF AND CONDITIONING:
SHAMPOOS CONTAINING :
POLYALKYLENE GLYCOL AND :
CATIONIC POLYMERS :

AMENDMENT UNDER 37 CFR 1.111

Commissioner of Patents

Washington, DC 20231

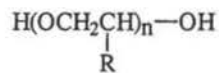
Dear Sir:

In response to the May 11, 2001 Office Action in the above-entitled application, please amend the above-identified application as follows, please enter the attached Terminal Disclaimers and consider the following remarks. Attached hereto is a Petition for a Three-Month Extension of Time, and the fee required under 37 CFR § 1.17(a), providing for a timely response up to and including November 13, 2001 (November 11th falls on a Sunday and November 12th is a federal holiday).

In the Claims

Please amend claims 11 and 21 as follows:

11. (Amended) A shampoo composition according to Claim 1, wherein said non-volatile conditioning agent comprises silicone.
21. (Amended) A shampoo composition comprising:
- from about 10% to about 25%, by weight of the composition, of an anionic surfactant;
 - from about 0.01% to about 10%, by weight of the composition, of an insoluble, non-volatile silicone conditioning agent;
 - from about 0.3% to about 2%, by weight of the composition, of a zinc salt of 1-hydroxy-2-pyridinethione;
 - from about 0.1% to about 2%, by weight of the composition, of at least one cationic polymer selected from the group consisting of guar derivatives, cellulose derivatives, and mixtures thereof;
 - from 0.025% to about 1.5%, by weight of the composition, of a polyalkylene glycol corresponding to the formula:



- wherein **R** is selected from the group consisting of hydrogen, methyl and mixtures thereof,
 - wherein **n** is an integer having an average value from about 3,500 to about 15,000; and
- f) water.

Please cancel claims 13 and 14 without prejudice.

Please add new claims 26 and 27:

26. A shampoo composition according to Claim 18, wherein said polyalkylene glycol has an average value of **n** from: about 3,500 to about 15,000.

27. A shampoo composition according to Claim 20, comprising from about 0.025% to about 1.5%, by weight of the composition, of said polyalkylene glycol.

Remarks

Claims 1-12 and 15-27 are pending in the present application. No additional claims fee is due.

Claims 13 and 14 are canceled without prejudice. They have been replaced by new claims 26 and 27. New claims 26 and 27 are supported by, at least, original claims 13 and 14. This amendment was made to correct the order of the claims and not in response to an issue of patentability.

Claim 11 has been amended to remove the word "dispersed." Support for the amendment is found, at least, at page 8 lines 4-5 of the specification. In addition, Claim 21 has been amended to correct a typographical error regarding the percentage of cationic polymer. Support for this amendment is found, at least, in the Applicants' specification at page 21, line 16.

Attached hereto is a marked-up version of the changes made to claims 11 and 21 by the current amendment. The attached page is captioned "Version with markings to show changes made."

Response to the Office Action

The Claim Objections

Claims 13 and 14 have been objected to as being in improper dependent form. In response, Applicants have cancelled these claims and added new claims 26 and 27. Applicants contend that the claims are now in proper dependent form.

The Double Patenting Rejection

Claims 1-25 have been rejected as claiming the same invention as that claimed in Applications 09/558,466 and 09/558,465. In response, Applicants are submitting herewith two Terminal Disclaimers. Applicants contend that the Terminal Disclaimers moot the double patenting rejection.

The Rejection under 35 U.S.C. 112, second paragraph

Claims 11 and 21 have been rejected under 35 U.S.C. 112, second paragraph as being indefinite. Specifically, claim 11 has been rejected due to the term “dispersed, silicone.” In response, Applicants have amended claim 11 to simply recite “silicone.” Claim 21 has been rejected due to an indefinite range for subsection (d). In response, Applicants have amended the claim to correct this typographical error. Claim 21 now recites a range of “from about 0.1% to about 2%” in subsection (d). Accordingly, Applicants respectfully submit that the rejection under 35 U.S.C. 112, second paragraph has been overcome.

The Rejection under 35 U.S.C. 102(e) over Guskey

Claims 1-14 and 22 have been rejected under 35 U.S.C. 102(e) as being anticipated by Guskey (US 5,977,036). Applicants respectfully traverse this rejection since Guskey does not specifically disclose the anti-dandruff particulate claimed by Applicants. In addition, Applicants’ claimed range of anti-dandruff particulate is not disclosed with sufficient specificity in Guskey to qualify as anticipation.

First, Applicants’ claim 1 requires the presence of from about 0.1% to about 4% of an anti-dandruff particulate. The anti-dandruff component is required to be a particulate since the invention concerns depositing the anti-dandruff component from a coacervate-forming shampoo. Guskey, in Col. 17, line 38, mentions “anti-dandruff agents” as one of many possible optional components. The term “anti-dandruff agent” is broader than just particulates and includes all other forms (e.g. liquid, etc.) of anti-dandruff compositions. The Guskey reference does not disclose anti-dandruff particulates.

Second, Applicants’ claim 1 specifies that “from about 0.1 to about 4%” of the anti-dandruff particulate is present. Guskey’s disclosure of “from about 0.001% to about 10%” for any of the optional components does not qualify as an anticipation of Applicants’ claimed range. For a prior art range to anticipate the claimed invention’s range, it must be disclosed with “sufficient specificity” (see MPEP 2131.03). Applicants contend that Guskey’s range is too broad to sufficiently specify Applicants’ range of from about 0.1 to about 4%. For example, Applicants’ low end of the range is one hundred times higher than that disclosed in Guskey.

Guskey's brief mention of anti-dandruff agents as one of many optional ingredients and a blanket range for any of the optional ingredients does not anticipate Applicants' claim 1. Guskey does not teach using an anti-dandruff particulate, as claimed by Applicants. Further, Guskey's disclosed range is too broad to anticipate Applicants' claimed range of anti-dandruff particulate. Therefore, Applicants contend that the claimed invention is novel and that the rejection should be withdrawn.

The Rejection under 35 U.S.C. 103(a) over Guskey in view of Cardin et al.

Claims 1-25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Guskey in view of Cardin et al. Applicants respectfully traverse this rejection. The references do not establish a *prima facie* case of obviousness for two reasons. First, they do not teach or suggest all of Applicants' claim limitations. Specifically, the combination of references does not suggest combining an anti-dandruff particulate, a cationic polymer, a conditioning agent, and polyalkylene glycol in a shampoo composition. Secondly, combining the anti-dandruff particles of Cardin et al. with the shampoo formula of Guskey would not have given a reasonable expectation of success. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

As discussed in the Background of the Invention, the purpose of the present invention is to provide anti-dandruff shampoos with improved conditioning performance. In the past, there has been a problem trying to achieve this because conditioning ingredients interfere with the deposition of the anti-dandruff material. As a result, consumers had to choose between conditioning shampoos with no anti-dandruff component or anti-dandruff shampoos with little or no conditioning effect.

The inventors of the claimed subject matter have surprisingly found a solution to this problem. By using a shampoo comprising cationic polymer, anti-dandruff particulates and polyalkylene glycol in particular amounts, the inventors have found that they can provide the conditioning benefits of a cationic polymer-containing shampoo while still getting adequate coverage of the anti-dandruff material on the scalp.

Cationic polymer causes the shampoo composition of the present invention to form a coacervate upon dilution. The coacervate provides improved wet hair conditioning benefits by forming particles that cling to the hair shafts. This coacervate

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