

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

U.S. Patent No. 6,451,300 to Dunlop *et al.*

Issue Date: September 17, 2002

Title: Anti-Dandruff and Conditioning Shampoos Containing
Polyalkylene Glycols and Cationic Polymers

CASE IPR: Unassigned

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 6,451,300 UNDER 35 U.S.C. §§311-319 and
37 C.F.R. §§42.1-.80, 42.100-.123**

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I. INTRODUCTION

CONOPCO, INC. dba UNILEVER's ("**Petitioner**") Petition for *Inter Partes* Review ("**Petition**") seeks cancellation of claims 1-25 ("**challenged claims**") of U.S. Pat. No. 6,451,300 to Dunlop *et al.*, titled "Anti-Dandruff and Conditioning Shampoos Containing Polyalkylene Glycols and Cationic Polymers" ("**the '300 patent**"). (UNL 1001.)

II. OVERVIEW

As shown herein, the challenged claims of the '300 patent never have been issued because they are unpatentable over the art cited herein. Because Petitioner is at a minimum reasonably likely to prevail in showing unpatentability, the Petition should be granted and trial instituted on all of the challenged claims.

The shampoo compositions recited in the claims of the '300 patent are simply a rebottling or obvious reformulating of known shampoo compositions containing known components in known amounts, in an attempt to evergreen a patent family. And the shampoo compositions and components claimed in the '300 patent have properties and uses recognized prior to the earliest possible priority date (EPD) of the patent. The Procter & Gamble Company ("P&G") obtained the '300 patent by drafting shampoo composition claims that purport to be complicated – reciting broad concentration ranges of several components. But, the claims of the '300 patent merely recite shampoo compositions, and methods of using them, that

were known or, at best, simple and obvious variations of known shampoo compositions prior to the EPD of the '300 patent.

The '300 patent's claims relate to anti-dandruff and conditioning shampoos. P&G purported, during prosecution of the application, that "[b]y 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." (UNL 1002, 5:¶4.) But such a formulation had already been prepared, and all of the components, % ranges, and properties recited in the claims were well known prior to the EPD of the '300 patent. Thus, the claims of the '300 patent recite shampoo compositions containing known combinations of components having entirely expected properties, and known methods of using such compositions.

Petitioner is reasonably likely to prevail in showing anticipation and/or obviousness over the prior art. *Inter partes* review of the '300 patent should be instituted.

III. GROUNDS FOR STANDING (37 C.F.R. §42.104(a)); PROCEDURAL STATEMENTS

Petitioner certifies that (1) the '300 patent is available for IPR; and (2) Petitioner is not barred or estopped from requesting IPR of any claim of the '300 patent on the grounds identified herein. This Petition is filed in accordance with

37 CFR §42.106(a.) Concurrently filed herewith are a Power of Attorney and Exhibit List pursuant to §42.10(b) and §42.63(e), respectively. The required fee is paid through online credit card payment. The Office is authorized to charge fee deficiencies and credit overpayments to Deposit Acct. No. 19-0036 (Customer ID No. 45324).

IV. MANDATORY NOTICES (37 C.F.R. §42.8(a)(1))

Real Parties-In-Interest (37 C.F.R. §42.8(b)(1)) are: CONOPCO, INC. dba UNILEVER; UNILEVER PLC; and UNILEVER BV.

Petitioner Provides Notice of Related Matters (37 C.F.R. §42.8(b)(2)):

Judicial matters: None. Administrative matters: In Petitions filed concurrently herewith, Petitioner seeks IPR of (i) U.S. Patent No. 6,649,155 and (ii) U.S. Patent No. 6,974,569, each issuing from distinct applications filed on the same day and claiming priority to distinct applications filed on the same day, over prior art references, including those cited herein.

Designation of Lead and Back-Up Counsel (37 C.F.R. §42.8(b)(3)):

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