

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CONOPCO, INC. dba UNILEVER

Petitioner

v.

THE PROCTOR & GAMBLE COMPANY

Patent Owner

Case No. IPR2013-00509

Patent 6,451,300

SECOND DECLARATION OF ARUN NANDAGIRI

1. I have personal knowledge of the facts contained in this Second Declaration, am of legal age, and, if called upon to do so, I could and would testify to the following facts.

2. I have been retained as an expert witness on behalf of Conopco, Inc. (“Unilever”) for the above-captioned *inter partes* review (“IPR”). I am being compensated for my time in connection with this IPR at my standard legal consulting rate, which is \$290 per hour. I understand that this proceeding involves US Patent No. 6,451,300 (“the ’300 patent”), Ex. 1001 which resulted from U.S. Application No. 09/558,447 (“the ’447 application”), filed on April 25, 2000, and alleging a priority date of May 3, 1999. I further understand that, according to the USPTO records, the ’300 patent is currently assigned to the Procter & Gamble Company (“P&G”).

3. I submitted a First Declaration in this proceeding in support of Unilever’s Petition for *Inter Partes* Review of United States Patent No. 6,451,300 (“Petition”). Ex. 1003. I provided my background and qualifications in my First Declaration, Ex. 1003 ¶¶ 4-10, and in my *curriculum vitae*, Ex. 1004. My education and background were also provided in my deposition (Nandagiri Dep., Ex. 2019 at 8:10-23; 9:21-17:5).

4. I understand that on February 12, 2014, the Patent Trial and Appeal Board (PTAB) granted Unilever’s Petition as to Claims 1, 2, 4, 5, 11, 13, 16, 17

and 20 of the '300 patent as unpatentable under 35 U.S.C. § 102 over Kanebo, JP 9-188614, Ex. 1006, and as to Claims 1, 3, 12, 18, 19, 24, and 25 of the '300 patent as unpatentable under 35 U.S.C. § 103, thus instituting the Inter Partes Review of the '300 patent. Paper 10, 6-8, 10-14.

5. I understand that on July 25, 2014, P&G submitted a Patent Owner's Response Pursuant to 37 C.F.R. § 42.120 in opposition to the Petition, in which P&G sets forth its argument as to why claims 1, 3, 12, 16, 18-19, and 25 of the '300 patent have allegedly not been proven obvious. Paper 35. I further understand that P&G did not argue against the anticipation of claims 1, 2, 4, 5, 11, 13, 16, 17 and 20. I further understand P&G to have argued that I did not provide reasons a person of ordinary skill in the art would have been motivated to modify the references over which trial was instituted on obviousness grounds.

6. I understand that in considering the obviousness of an invention, one should consider whether a modification of a reference represents merely a substitution of one known element for another for the same function with predictable results.

7. I have been asked to consider Patent Owner's Response (Paper 34, "Resp."), the Declaration of Dr. Robert Y. Lochhead (Ex. 2015), the Deposition Transcript of Dr. Lochhead (Ex. 1036), and all other exhibits cited by me herein.

The basis for my analyses of anticipation and obviousness remain as described in my first Declaration. Ex. 1003 and as further described below.

I. SKILL IN THE ART – A POSA WOULD HAVE KNOWN HOW TO OPTIMIZE AD CONDITIONING SHAMPOOS

8. P&G states that it “does not dispute” the level of skill in the art as described in my first Declaration at ¶ 12. Resp. at 7. However, I disagree with the limited knowledge and understanding of the prior art that P&G and its expert, Dr. Lochhead, attribute to a person of ordinary skill in the art (“POSA”) and to the alleged inability of a POSA to formulate shampoos with the desired balance of a range of properties, including cleansing, anti-dandruff (“AD”) and conditioning properties.

9. As I noted in my first Declaration, AD and conditioning shampoos were well-known prior to the ’300 patent as evidenced by the art of record. Ex. 1003, ¶ 19. P&G admits this as well (Resp. at 7) and in fact, according to its own website, P&G first offered an anti-dandruff shampoo in 1961, and introduced a conditioning antidandruff shampoo as early as 1979. Exs. 1056, 1057.

10. Formulating multi-attribute shampoos, including AD/conditioning shampoos has been the norm in the industry for decades and was well within the capability of a POSA. *See* Lochhead Happi 2006 Art. at 83, 3rd col.; Exs. 1006 at ¶¶ 2-3, 22-44; 1009 at 1:17-2:31; 6:36-7:20, Examples 1-3; 1010 at 3-4, 30-33; 1013 at col. 1, l. 13-col. 2, l. 16; col. 19, l. 11-col. 20, l. 14; 1014 at col. 1, l. 11-37;

col. 13-14, Examples I-XII. Formulating an AD/conditioning shampoo was even one of the tasks Dr. Lochhead carried out for Unilever in the late 1970s as part of his normal job responsibilities. *See* Ex. 1036 at 49:11-50:2; 56:25-57:6. Dr. Lochhead admits that a POSA appreciated such shampoos required good cleansing, conditioning, and AD properties. *Id.* at 61:5-18; 63:11-20; 137:8-19; 139:22-140:10. A 1979 report he authored as part of his employment supports this as well. *Id.* at 56:25-57:6; 61:5-18 ; Lochhead Rpt (Ex. 1040).

11. Even before the 1970s, a POSA appreciated that in order to formulate a successful commercial AD shampoo, the shampoo had to simultaneously exhibit numerous excellent attributes. As early as the 1960s it was appreciated that in order to attain consumer approval, a shampoo would be assessed as to at least 25 distinct qualities or characteristics. Ex. 1047 at 540-41 (Sorkin). A variety of laboratory procedures were well-known and used for these assessments even then. *Id.*, 541-550; *infra* at ¶¶ 32-39, 44-45. References predating the '300 patent show that a shampoo formulator continued to be concerned with balancing multiple properties, including AD and conditioning. *Infra* at ¶¶ 43-49.

12. As demonstrated in the prior art, a POSA recognizes tradeoffs between too much conditioning and cleansing and/or greasiness (Ex. 1018 at 1:26-36; Ex. 1010 at 3), between AD agent deposition and clean feel (Ex. 1009 at 1:65-2:5), and between AD agent deposition and conditioning (*e.g.*, Ex. 1013 at 12:10-

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