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

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

US 6,451,300 (“the ’300 patent”) simply repackages old anti-dandruff (AD) shampoo compositions known in the art—including P&G’s own—with few or no changes. P&G admits as much for Claims 1, 2, 4, 5, 11, 13, 16, 17 and 20 by failing to contest Kanebo’s disclosure of the claimed formulations. The remaining claims are simply minor modifications of near-identical formulations in Kanebo or Evans. The Board should uphold its preliminary finding that Claims 1-5, 11, 13, 16-20, 24 and 25 of the ’300 patent are unpatentable. Inst. Dec. at 6-8, 10-14.

II. SKILL IN THE ART

The parties seemingly agree on the level of skill in the art, but P&G presents a POSA as unable to understand the connected disclosures within Kanebo or Evans, unaware of art-recognized equivalents for cationic polymers and pearl luster/suspending agents, and unable to routinely optimize shampoos to use such interchangeable components. Resp., 16-22, 24-27. Contrary to P&G’s assertion, a POSA is capable of making inferences and is presumed to know basic knowledge in the field and all pertinent art relating to shampoo compositions. *Custom Accessories, Inc. v. Jeffrey-Allen Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986).

III. CLAIMS 1, 2, 4, 5, 11, 13, 16, 17 AND 20 ARE INVALID FOR ANTICIPATION

P&G itself recognizes that Claims 1, 2, 4, 5, 11, 13, 16, 17 and 20 are invalid for anticipation. Indeed, P&G does not even make an effort to rebut (*see* Resp. at

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1) the Board's finding that Kanebo's Example 10 teaches each and every limitation recited by these claims. The Board should, therefore, simply confirm their invalidity. *See* Inst. Dec., 6-8; Nandagiri 2nd Decl. (Ex. 1034), ¶25; *cf.*, *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1289, 1311 (Fed. Cir. 2010) (no triable issue of material fact where evidence of anticipation by prior art was unchallenged).

In addition, Unilever notes that Claim 3 only alters one member of the Markush group of Claim 2, narrowing that member to a specific guar. Because the modified Markush group still reads on cellulose derivatives, Claim 3 is anticipated for the same reasons as Claim 2. Ex. 1034, ¶26. Even if Claim 3 did limit the overall composition to the specific guar, it still would be obvious over Kanebo as explained below.

IV. CLAIMS 1, 3, 12, 16, 18, 19, 24, AND 25 ARE INVALID FOR OBVIOUSNESS

A. Claims 3, 18, and 25 Are Obvious Over Kanebo

Given P&G's implicit admission that Kanebo Example 10 anticipates Claims 1, 2, 4, 5, 11, 13, 16, 17 and 20, the only remaining question for the Board is whether the minor modifications recited by dependent Claims 3, 18, and 25 would have been obvious over Kanebo. Ex. 1034, ¶¶27-28. Because these dependent claims merely recite interchangeable shampoo ingredients expressly disclosed in Kanebo and the prior art as a whole, they represent nothing more than

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