

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

**CONOPCO, INC. d/b/a UNILEVER**  
**Petitioner**

**v.**

**THE PROCTER & GAMBLE COMPANY**  
**Patent Owner**

---

**Case IPR2013-00509**  
**Patent 6,451,300**

---

**PATENT OWNER'S PRELIMINARY RESPONSE**  
**PURSUANT TO 37 C.F.R. § 42.107**

**Mail Stop "PATENT BOARD"**  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. BACKGROUND OF THE '300 PATENT .....	2
III. THE BOARD SHOULD DECLINE TO CONSIDER MOST, IF NOT ALL, OF THE GROUNDS AND REFERENCES IN UNILEVER'S PETITION BECAUSE THEY ARE REDUNDANT AND CUMULATIVE .....	4
A. The Art Cited Against The '300 Patent Is Redundant .....	4
1. Kanebo, Bowser/Evans, And Evans Are Horizontally Redundant With Respect To Many Of The Challenged Claims .....	6
B. Many Grounds Are Cumulative Of A Prior Office Proceeding .....	12
IV. THE BOARD SHOULD REJECT UNILEVER'S PETITION BECAUSE IT FAILS TO ESTABLISH A REASONABLE LIKELIHOOD THAT AT LEAST ONE OF THE CLAIMS CHALLENGED IN THE PETITION IS UNPATENTABLE .....	14
A. The Board Should Deny Grounds 5-9 Because Unilever Uses Impermissible Hindsight To Assert That The References Disclose The Claimed Compositions .....	15
1. Unilever Picks And Chooses The Individual Claimed Elements From Numerous Separate Examples In Multiple References .....	15
2. The Nandagiri Declaration Is Conclusory And Does Not Support Unilever's Use Of Hindsight.....	17
B. The Board Should Deny Grounds 5-9 Because Unilever Identifies No Flaws In The Prior Art To Invite Improvement.....	18
C. Unilever's Petition Contains Insufficient Reasons For Combining The References In Grounds 3-5 And 7-9.....	19
D. The Board Should Deny Grounds 6-9 Because A POSA Would Have No Motivation To Modify Evans To Arrive At The Claimed Compositions .....	22

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
E. The Board Should Deny Ground 5 As To Claim 6 Because The Combination of Bowser And Evans Does Not Meet The Claimed Guar Derivative Molecular Weight Limitation .....	24
1. Unilever Has Not Shown That Bowser Inherently Discloses The Claimed Guar Derivative .....	24
2. The Nandagiri Declaration Is Conclusory And Does Not Support Unilever’s Obviousness Assertions.....	27
3. The Range of Claim 6 Would Not Have Been Obvious To A POSA In Light Of Evans’ Broadly Disclosed Range.....	27
F. The Board Should Deny Ground 2 As To Claims 6-7 Because Unilever Provides Only Conclusory Allegations Regarding How Or Why A POSA Would Arrive At The Claimed Compositions.....	29
G. The Board Should Deny Ground 7 As To Claims 8-10 Because The Claimed Ranges Would Not Have Been Obvious To A POSA In Light Of Coffindaffer’s Broadly Disclosed Ranges.....	30
V. OBJECTIVE INDICIA OF NON-OBVIOUSNESS.....	32
VI. CONCLUSION.....	32

## TABLE OF AUTHORITIES

	<b>Page</b>
<b>CASES</b>	
<i>Amkor Tech., Inc. v. Tessera, Inc.</i> , No. IPR2013-00242, Paper No. 37, Decision Institution of <i>Inter Partes</i> Review (P.T.A.B. Oct. 11, 2013) .....	6
<i>Berk-Tek LLC v. Belden Techs. Inc.</i> , No. IPR2013-00057, Paper No. 21, Decision on Request for Rehearing (P.T.A.B. May 14, 2013) .....	5
<i>Broadcom Corp. v. Emulex Corp.</i> , 732 F.3d 1325 (Fed. Cir. 2013) .....	23
<i>Ecolochem, Inc. v. Southern California Edison Co.</i> , 227 F.3d 1361 (Fed. Cir. 2000) .....	16
<i>Genetics Institute, LLC v. Novartis Vaccines and Diagnostics, Inc.</i> , 655 F.3d 1291 (Fed. Cir. 2011) .....	28, 31, 32
<i>Heart Failure Techs., LLC v. Cardiokinetix Inc.</i> , No. IPR2013-00183, Paper No. 12, Decision Denying Institution of <i>Inter</i> <i>Partes</i> Review (P.T.A.B. July 31, 2013) .....	21
<i>Hewlett-Packard Co. v. MCM Portfolio, LLC</i> , No. IPR2013-00217, Paper No. 10, Decision Institution of <i>Inter Partes</i> Review (P.T.A.B. Sept. 10, 2013) .....	18, 27
<i>In re Kahn</i> , 441 F.3d 977 (Fed. Cir. 2006) .....	16
<i>In re Ochiai</i> , 71 F.3d 1565 (Fed. Cir. 1995) .....	19
<i>In re Robertson</i> , 169 F.3d 743 (Fed. Cir. 1999) .....	24
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007) .....	19, 20, 21

...

**TABLE OF AUTHORITIES**  
(continued)

**Page**

*Leo Pharm. Prods., Ltd. v. Rea*,  
726 F.3d 1346 (Fed. Cir. 2013) .....19

*Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*,  
No. CBM2012-00003, Paper No. 7, Order (Redundant Grounds)  
(P.T.A.B. Oct. 25, 2012).....4, 5, 6, 7

*Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*,  
No. CBM2012-00003, Paper No. 9, Response to Order (Redundant  
Grounds) (P.T.A.B. Nov. 1, 2012) .....8

*Oracle Corp. v. Clouding IP, LLC*,  
No. IPR2013-00075, Paper No. 8, Decision Institution of *Inter Partes*  
Review (P.T.A.B. May 3, 2013).....5

*Sipnet EU S.R.O. v. Straight Path IP Group, Inc.*,  
No. IPR2013-00246, Paper No. 11, Decision Institution of *Inter Partes*  
Review (P.T.A.B. Oct. 11, 2013) .....21

**STATUTES**

35 U.S.C. § 325(d) .....1, 12, 14

**OTHER AUTHORITIES**

37 C.F.R. § 42.23(a).....v

37 C.F.R. § 42.65 .....18, 27

37 C.F.R. § 42.104(b)(4).....14

37 C.F.R. § 42.108(c).....1, 14

157 Cong. Rec. S1042 (daily ed. Mar. 1, 2011) (statement of Sen. Kyl).....13

# 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.