

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CONOPCO, INC. dba UNILEVER  
Petitioner

v.

THE PROCTER & GAMBLE COMPANY  
Patent Owner

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Case IPR2013-00509  
Patent 6,451,300 B1

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Before LORA M. GREEN, GRACE KARAFFA OBERMANN, and  
RAMA G. ELLURU, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

DECISION  
Institution of *Inter Partes* Review  
37 C.F.R. § 42.108

P&G Exhibit 2004  
Conopco v. P&G  
IPR2014-00507

## I. INTRODUCTION

Conopco, Inc. dba Unilever (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1-25 of U.S. Patent No. 6,451,300 B1 (Ex. 1001, the ’300 patent). Paper 2 (“Pet.”). The Procter & Gamble Company (“Patent Owner”) filed a timely preliminary response. Paper 8 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides:

**THRESHOLD** -- The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Based on the information presented, there is a reasonable likelihood that Petitioner would prevail with respect to claims 1-5, 11-13, 16-20, 24, and 25. Accordingly, we authorize an *inter partes* review of those claims. We deny the Petition as to claims 6-10, 14, 15, and 21-23.

### A. *Related Proceedings*

The ’300 patent is the subject of co-pending district court litigation initiated after the filing of the Petition. *See Procter & Gamble Co. v. Conopco, Inc.*, 1:13-cv-00732-TSB (S.D. Oh.) (filed Oct. 10, 2013). Concurrently herewith, we issue Decisions on Petitions in two other *inter partes* review proceedings involving the same parties. *See* IPR 2013-00505 (relating to US Patent No. 6,974,569 B2) and IPR 2013-00510 (relating to US Patent No. 6,649,155 B1).

*B. The '300 Patent (Ex. 1001)*

The '300 patent is directed to a shampoo composition and method for providing a combination of anti-dandruff efficacy and conditioning. Ex. 1001 2:20-22. According to the '300 patent specification, “[t]hese shampoos comprise: (A) from about 5% to about 50%, by weight, of an anionic surfactant; (B) from about 0.01% to about 10%, by weight, of a non-volatile conditioning agent; (C) from about 0.1% to about 4%, by weight, of an anti-dandruff particulate; (D) from about 0.02% to about 5%, by weight, of at least one cationic polymer; (E) from 0.005% to about 1.5%, by weight, of a polyalkylene glycol; and (F) water.” *Id.* at 2:22-30. The specification further defines the polyalkylene glycol. *Id.* at 2:30-33.

The specification sets forth five examples of the inventive shampoo composition. *Id.* at 31:50-33:45. The specification also describes a method for applying the shampoo to the hair and scalp, which preferably has been wetted with water, in an amount that is effective to confer anti-dandruff efficacy and hair conditioning; the shampoo is thereafter rinsed off. *Id.* at 2:34-37; 31:24-28.

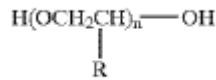
*C. Representative Claim*

Petitioner seeks *inter partes* review of claims 1-25, all of the issued claims of the '300 patent. The independent claims are drawn to a shampoo composition. Ex. 1001 (claims 1, 19). Also claimed is a method for applying the composition to wet hair to provide anti-dandruff efficacy and hair conditioning (claim 20), and to regulate hair growth (claims 22-23). Independent claims 1 and 19 specify a shampoo composition comprising an anionic surfactant, a non-volatile conditioning agent, an anti-dandruff particulate, a cationic polymer, and a polyalkylene glycol. Weight-percent ranges are specified for those components.

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A shampoo composition comprising:

- a) from about 5% to about 50%, by weight of the composition, of an anionic surfactant;
- b) from about 0.01% to about 10%, by weight of the composition, of a non-volatile conditioning agent;
- c) from about 0.1% to about 4%, by weight of the composition, of an anti-dandruff particulate;
- d) from about 0.02% to about 5%, by weight of the composition, of at least one cationic polymer;
- e) from 0.005% to about 1.5%, by weight of the composition, of a polyalkylene glycol corresponding to the formula:



- i) wherein R is selected from the group consisting of hydrogen, methyl and mixtures thereof;
  - ii) wherein n is an integer having an average value from about 1,500 to about 120,000; and
- f) water.

*D. The Asserted Grounds of Unpatentability*

Petitioner challenges claims 1-25 on the following grounds of unpatentability:

Reference[s]	Basis	Claims challenged
Kanebo <sup>1</sup>	§ 102(b)	1-5, 11, 13, 16-18, 20, and 25
Kanebo	§ 103	1-7, 11, 13, 16-18, 20, and 25
Kanebo and Cardin <sup>2</sup>	§ 103	14, 15, and 22

<sup>1</sup> Kanebo JP 9-188614 (July 22, 1997) (English translation) (Ex. 1006).

<sup>2</sup> Cardin US 5,104,645 (Apr. 14, 1992) (Ex. 1014).

Reference[s]	Basis	Claims challenged
Kanebo, Schwen, <sup>3</sup> and Gibson <sup>4</sup>	§ 103	21 and 23
Bowser <sup>5</sup> and Evans <sup>6</sup>	§ 103	1-7, 11-13, 16-20, 24, and 25
Evans	§ 103	1, 2, 4, 11-13, 16-20, 24, and 25
Evans and Coffindaffer <sup>7</sup>	§ 103	3, 5, and 8-10
Evans and Cardin	§ 103	14, 15, and 22
Evans, Schwen, and Gibson	§ 103	21 and 23

## II. ANALYSIS

### A. Claim Construction

In an *inter partes* review proceeding, we give claim terms in unexpired patents their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Under that standard, we assign claim terms their ordinary and customary meaning, as understood by a person of ordinary skill in the art, in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

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<sup>3</sup> Schwen WO 95/03319 (Feb. 2, 1995) (Ex. 1015).

<sup>4</sup> Gibson US 5,015,470 (May 14, 1991) (Ex. 1030).

<sup>5</sup> Bowser US 5,723,112 (Mar. 3, 1998) (Ex. 1009).

<sup>6</sup> Evans WO 97/14405 (Apr. 24, 1997) (Ex. 1010).

<sup>7</sup> Coffindaffer US 5,624,666 (Apr. 29, 1997) (Ex. 1013).

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