

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

Case IPR2013-00510
Patent 6,649,155 B1

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

OBERMANN, *Administrative Patent Judge*.

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

P&G Exhibit 2009
Conopco v. P&G
IPR2014-00507

I. INTRODUCTION

Conopco, Inc. dba Unilever (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1-23 of U.S. Patent No. 6,649,155 B1 (Ex. 1001, “the ’155 patent”). Paper 2 (“Pet.”). The Procter & Gamble Company (“Patent Owner”) filed a timely preliminary response. Paper 7 (“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, we are not persuaded that there is a reasonable likelihood that Petitioner would prevail with respect to at least one claim of the ’155 patent. On this record, we deny the Petition.

A. *Related Proceedings*

The ’155 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 2013-00509 (relating to US Patent No. 6,451,300 B1).

B. The '155 Patent (Ex. 1001)

The '155 patent is directed to a shampoo composition and method for providing a combination of anti-dandruff efficacy and conditioning. Ex. 1001 2:32-34. According to the '155 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 a cationic guar derivative; and (E) water.” *Id.* at 2:34-41. The specification further discloses that “[t]he cationic guar derivative has a molecular weight from about 50,000 to about 700,000, and has a charge density from about 0.05 meq/g to about 1.0 meq/g.” *Id.* at 2:41-44. The specification identifies polymers sold by Rhodia Company under the trade names JAGUAR™ C13S and JAGUAR™ C17 as suitable cationic guar derivatives for use in the invention. *Id.* at 20:9-12; 21:6-11.

C. Representative Claim

Petitioner seeks *inter partes* review of claims 1-23, all of the issued claims of the '155 patent. Claims 1 and 19 are independent claims. 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 a cationic guar derivative;

- i) wherein said cationic guar derivative has a molecular weight from about 50,000 to about 700,000; and
- ii) wherein said cationic guar derivative has a charge density from about 0.05 meq/g to about 1.0 meq/g;
- e) water.

Claim 19 further narrows the weight-percent, molecular weight, and charge density ranges of the cationic guar derivative. Specifically, that derivative must comprise from about 0.1% to about 5% of the composition by weight, have a molecular weight from about 100,000 to about 400,000, and have a charge density from about 0.4 meq/g to about 1.0 meq/g. The '155 patent also specifies 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 and 23).

D. The Asserted Grounds of Unpatentability

Petitioner challenges claims 1-23 on the following grounds of unpatentability:

Reference[s]	Basis	Claims challenged
Bowser ¹	§ 102(b)	1-5, 7, 9-11, 19, 20, and 22
Bowser	§ 103	1-5, 7, 9-11, 19, 20, and 22
Bowser and Cardin ²	§ 103	1-11, 19, 20, and 22
Bowser, Schwen, ³ and Gibson ⁴	§ 103	1-5, 7, 9-11, and 19-23

¹ Bowser US 5,723,112 (Mar. 3, 1998) (Ex. 1009).

² Cardin US 5,104,645 (Apr. 14, 1992) (Ex. 1014).

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

⁴ Gibson US 5,015,470 (May 14, 1991) (Ex. 1030).

Reference[s]	Basis	Claims challenged
Reid ⁵	§ 102(b)	1-5, 7, 9-13, 19, 20, and 22
Reid	§ 103	1-5, 7, 9-13, 19, 20, and 22
Reid and Bowser	§ 103	1-5, 7, 9-13, 19, 20, and 22
Reid and Cardin	§ 103	1-13, 19, 20, and 22
Reid, Schwen, and Gibson	§ 103	1-5, 7, 9-13, and 19-23
Evans ⁶	§ 103	1-5, 7, 9-20, and 22
Evans and Bowser	§ 103	1-5, 7, 9-20, and 22
Evans and Cardin	§ 103	1-20 and 22
Evans, Schwen, and Gibson	§ 103	1-5, 7, and 9-23

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

⁵ Reid US 5,085,857 (Feb. 4, 1992) (Ex. 1018).

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

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