

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 IPR: Unassigned

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**PETITION FOR *INTER PARTES* REVIEW OF  
U.S. PATENT NO. 6,974,569 UNDER 35 U.S.C. §§ 311-319 and  
37 C.F.R. §§ 42.1-.80, 42.100-.123**

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Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	OVERVIEW .....	1
III.	GROUNDS FOR STANDING (37 C.F.R. § 42.104(a)); PROCEDURAL STATEMENTS .....	2
IV.	MANDATORY NOTICES (37 C.F.R. § 42.8(a)(1)).....	3
V.	STATEMENT OF THE PRECISE RELIEF REQUESTED AND THE REASONS THEREFOR (37 C.F.R. § 42.22(a)) .....	4
VI.	CLAIM CONSTRUCTION .....	4
VII.	PERSON OF ORDINARY SKILL IN THE ART AND STATE OF THE ART .....	6
VIII.	IDENTIFICATION OF CHALLENGE (37 C.F.R. § 42.104(b)).....	9
	A.    Ground 1: Claims 16, and 20 – 22 would have been obvious over Kanebo and Kalla .....	10
	B.    Ground 2: Claim 27 would have been obvious over Kanebo, Kalla and Evans.....	25
	C.    Ground 3: Claims 20 – 22 Would Have Been Obvious to a POSA Over Kanebo, Sime and Hoshowski Hair Care .....	28
	D.    Ground 4: Claims 14 and 16 would have been Obvious over Kanebo, Sime and Cardin.....	33
	E.    Ground 5: Claims 20 and 21 Would Have Been Obvious Over Kanebo, Cseh and Cosmedia.....	37
	F.    Ground 6: Claims 24 and 25 Would Have Been Obvious Over Kanebo and Cothran.....	39
	G.    Ground 7: Claim 13 Would Have Been Obvious Over Kanebo, Ramachandran and Hoeschele .....	43
	H.    Ground 8: Claims 31 and 33 Would Have Been Obvious Over Kanebo, Ramachandran and Bar-Shalom .....	45
	K.    Ground 9: Claims 20 - 22 would have been obvious over Reid, Sime and Cardin .....	48
IX.	Objective Indicia of Nonobviousness.....	58
X.	CONCLUSION.....	59

## **I. INTRODUCTION**

CONOPCO, INC'S ("**Petitioner**") Petition for *Inter Partes* Review seeks cancellation of claims 13, 14, 16, 20 – 22, 24, 25, 27, 31 and 33 ("**challenged claims**") of U.S. Pat. No. 6,974,569 to Dunlop *et al.* ("**the '569 patent**") (UNL 1001), which is owned by the Procter & Gamble Company ("**P&G**").

## **II. OVERVIEW**

As shown herein, the challenged claims of the '569 patent should never have been issued because they are unpatentable over the art cited herein. The '569 patent is an attempt to re-claim known shampoo compositions by claiming index values allegedly achieved by the claimed formulations. The claimed index values are allegedly related to the conditioning and antidandruff ("**AD**") properties of the claimed compositions. But this petition demonstrates that the claimed compositions were merely obvious variants of prior art compositions. Additionally, a person of skill in the art would have been led to conduct routine experiments to optimize for the desirable properties reflected by the claimed index values – namely, anti-dandruff efficacy (i.e., bioavailability and coverage), wet hair combability, clean hair feel, and antimicrobial activity. As the PTAB held in IPR2013-00505, Paper No. 9 (dated February 12, 2014), a skilled artisan would have recognized that each of these properties is desirable, at least one test for optimizing each property was available at the time the invention was made, and optimizing for

such properties would have been a matter of routine experimentation.

This petition is submitted with a Motion for Joinder within one month of the institution of trial to join the petitioned Grounds with those instituted in IPR2013-00505. The petition provides information that addresses the concerns previously expressed by the Board in denying *inter partes* review of the challenged claims of this petition. As shown herein, prior art references such as Kalla and Sime show that cationic guar derivatives having the molecular weights and charge densities recited in the claims of the '569 patent were known in the art and had been used to improve the efficacy of AD dandruff shampoos by improving deposition of the AD agent. As also shown herein, a POSA would have known that the common AD agent zinc pyrithione is inherently in particulate form in shampoo formulations and that the claims of the '569 patent recite well-known concentrations of particulate AD agent.

Petitioner is reasonably likely to prevail in showing obviousness over the prior art. *Inter partes* review of the '569 patent should be instituted.

### **III. GROUNDS FOR STANDING (37 C.F.R. § 42.104(a)); PROCEDURAL STATEMENTS**

Petitioner certifies that (1) the '569 patent is available for IPR; and (2) Petitioner is not barred or estopped from requesting IPR of any claim of the '569 patent on the grounds identified herein. This Petition is filed in accordance with 37

CFR § 42.106(a). Concurrently filed herewith are a Power of Attorney and Exhibit List pursuant to § 42.10(b) and § 42.63(e), respectively. The required fee is paid through online credit card payment. Please charge any fee deficiencies or credit overpayments to Deposit Acct. No. 19-0036 (Customer ID No. 45324).

**IV. MANDATORY NOTICES (37 C.F.R. § 42.8(a)(1))**

**Each Real Party-In-Interest (37 C.F.R. § 42.8(b)(1)) is:** CONOPCO, INC. DBA UNILEVER; UNILEVER, PLC; UNILEVER NV.

**Petitioner Provides Notice of Related Matters (37 C.F.R. § 42.8(b)(2)):**

Judicial matters: *Procter & Gamble Co. v. Conopco Inc.*, 13-cv-00732, U.S. District Court, Southern District of Ohio. Administrative matters: *Inter partes* review IPR2013-00505 for the '569 patent, in which trial on claims 1-12, 15, 17-19, 23, 26, 28-30 and 32 was instituted; *Inter partes* review IPR2013-00509 for U.S. Pat. No. 6,451,300, ("the '300 patent") which issued from a distinct application having overlapping inventors and claiming priority to distinct applications filed on the same day as the provisional application to which the '569 patent claims priority, in which trial on claims 1-5, 11-13, 16-20, 24 and 25 was instituted. In another Petition filed concurrently herewith, Petitioner seeks *inter partes* review of the '300 patent over references including those cited herein. *Inter partes* review IPR2013-00510 for U.S. Pat. 6.649,155, which also issued from a distinct application having overlapping inventors and claiming priority to distinct

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