



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/004,617	12/03/2004	Rainer Kroepke	3321-P30886	8148
13897	7590	08/12/2019	EXAMINER	
Abel Schillinger, LLP 8911 N. Capital of Texas Hwy Bldg 4, Suite 4200 Austin, TX 78759			WANG, SHENGJUN	
			ART UNIT	PAPER NUMBER
			1627	
			NOTIFICATION DATE	DELIVERY MODE
			08/12/2019	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

hmuensterer@abel-ip.com  
mail@Abel-IP.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* RAINER KROEPKE, LUDGER KOLBE,  
ANETTE BUERGER, and CLAUDIA MUNDT

---

Appeal 2018-008640  
Application 11/004,617<sup>1</sup>  
Technology Center 1600

---

Before DONALD E. ADAMS, JEFFREY N. FREDMAN, and  
TAWEN CHANG, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This Appeal<sup>2</sup> under 35 U.S.C. § 134(a) involves claims 101–138 (Final Act.<sup>3</sup> 2). Examiner entered rejections under 35 U.S.C. § 103(a) and obviousness-type double patenting. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

<sup>1</sup> Appellants identify “Beierdorf AG” as the real party in interest (Appellants’ April 3, 2018 Appeal Brief (App. Br.) 3).

<sup>2</sup> This Appeal is related to Appeal 2015-002324 (Application 11/004,617), Decision affirming-in-part entered December 5, 2016.

<sup>3</sup> Examiner’s September 5, 2017 Final Office Action.

## STATEMENT OF THE CASE

Appellants' disclosure "relates to cosmetic or dermatological preparations that include a combination of a dye and an anti-inflammatory active ingredient, and particularly to preparations for the prophylaxis and treatment of sun-irritated skin that aid the body's own repair mechanisms" and to the use of such preparations comprising such combinations" (Spec.<sup>4</sup> 1:6–10). Appellants' claim 101 is representative and reproduced below:

101. A cosmetic or dermatological preparation, wherein the preparation comprises from 0.01 % to 5 % by weight of at least one red light-filtering dye, at least one white pigment, and from 0.0001 % to 10 % by weight of at least one anti-inflammatory active ingredient which comprises at least one aqueous extract of *Glycyrrhiza inflata*.

(App. Br. 24.)

Grounds of rejection presented by Examiner:

I. Claims 101, 106, 112, 113, and 120–122 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of US Patent Application No. 10/985,733 in combination with Wenninger and Bara.

II. Claims 101, 106, 112, and 120–122 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of US Patent No. 7,799,256 in combination with Wenninger and Bara.

III. Claims 101 and 120–122 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable

---

<sup>4</sup> Appellants' December 3, 2004 Specification.

over the claims of US Patent Nos. 8,470,349 or 9,017,707 in combination with Wenninger and Bara.

IV. Claims 101–138 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of US Patent Nos. 7,824,717 in combination with Hahn, Nagatani, Wenninger, Millikan, Demko, Bara, and Krzysik.

V. Claims 101–117, 119–131, 133, 134, and 136–138 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Hahn,<sup>5</sup> Shibata,<sup>6</sup> Nagatani,<sup>7</sup> Wenninger,<sup>8</sup> Millikan,<sup>9</sup> Demko,<sup>10</sup> Bara,<sup>11</sup> Oto,<sup>12</sup> and Bikowski.<sup>13</sup>

VI. Claims 118, 132, and 135 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Hahn, Shibata, Nagatani, Wenninger, Millikan, Demko, Bara, Oto, Bikowski and Krzysik.<sup>14</sup>

---

<sup>5</sup> Hahn et al., US 5,804,203, issued Sept. 8, 1998.

<sup>6</sup> Shibata et al., *Inhibitory Effects of Licochalcone A Isolated from Glycyrrhiza inflata Root on Inflammatory Ear Edema and Tumour Promotion in Mice*, 57 PLANTA MED. 221–24 (1991).

<sup>7</sup> Nagatani et al., US 2001/0007677 A1, published July 12, 2001.

<sup>8</sup> International Cosmetic Ingredient Dictionary and Handbook 301–07 (7th ed., vol. 1, eds. John A. Wenninger et al., THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION, Washington, DC) (1997).

<sup>9</sup> Millikan, *The Proposed Inflammatory Pathophysiology of Rosacea: Implications for Treatment*, 2 DERMATOLOGY FOR THE CLINICIAN 43–47 (2003).

<sup>10</sup> Demko, US 3,873,687, issued Mar. 25, 1975.

<sup>11</sup> Bara et al., US 5,478,555, issued Dec. 26, 1995.

<sup>12</sup> Oto et al., JP 2001-170226, published Dec. 18, 2002, as translated in PTO 11-1219.

<sup>13</sup> Bikowski, *The Use of Therapeutic Moisturizers in Various Dermatologic Disorders*, 68 CUTIS 3–11 (2001).

<sup>14</sup> Krzysik et al., US 6,440,437 B1, issued Aug. 27, 2002.

*Obviousness-type Double Patenting:*

Appellants state that the obviousness-type double patenting Rejections I–IV “are not presented for review” (App. Br. 22). Therefore, because Appellants do not these rejections, they are summarily affirmed. *See* MANUAL OF PATENT EXAMINING PROCEDURE § 1205.02 (“If a ground of rejection stated by the examiner is not addressed in the appellant’s brief, appellant has waived any challenge to that ground of rejection and the Board may summarily sustain it, unless the examiner subsequently withdrew the rejection in the examiner’s answer.”).

*Obviousness:*

ISSUE

Does the preponderance of evidence relied upon by Examiner support a conclusion of obviousness?

FACTUAL FINDINGS (FF)

We adopt Examiner’s findings concerning the scope and content of the prior art (Final Act. 22–34; Ans.<sup>15</sup> 3–14), and provide the following findings for emphasis.

FF 1. Examiner relies on Millikan to disclose “that rosacea is known in the art to be characterized by facial redness and inflammation” (Final Act. 25; *see generally* Millikan 43–47).

FF 2. Bikowski discloses that “moisturizers can serve as important adjunctive therapeutic modalities for patients with various dermatologic disorders, including . . . rosacea” (Bikowski, Abstract; *see* Ans. 26).

---

<sup>15</sup> Examiner’s June 29, 2018 Answer.

# 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.