

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALFRED HOHENER
and
ROLAND FRICK

Appeal No. 2002-1335
Application No. 09/618,870

ON BRIEF

Before KIMLIN, OWENS and POTEATE, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2,

Appeal No. 2002-1335
Application No. 09/618,870

The examiner relies upon the following references as
evidence of obviousness:

Holcombe et al. (Holcombe)	4,033,718	Jul. 5, 1977
Hartman et al. (Hartman)	5,744,435	Apr. 28, 1998

Appellants' claimed invention is directed to a rinse added fabric softener composition comprising a phthalocyanine and a quaternary ammonium compound of the recited formulae. While the claimed phthalocyanines were known as photobleaching agents in detergent compositions, according to appellants, "[s]urprisingly, it has now been found that ester quat fabric softener compositions comprising water-soluble phthalocyanine compounds of a cationic, neutral or anionic nature bring about particularly good bleaching effects if textiles are treated in aqueous fabric softener bath comprising these compositions" (page 3 of principal brief, second paragraph).

Appealed claims 1, 2, 5, 6, 8-12 and 14-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hartman in view of Holcombe.

Appeal No. 2002-1335
Application No. 09/618,870

subject matter. Accordingly, we will not sustain the examiner's rejection.

Since Hartman discloses that laundry compositions within the scope of the invention may contain the presently claimed phthalocyanine and quaternary ammonium compounds, it is the examiner's position that it would have been obvious for one of ordinary skill in the art to formulate a laundry composition comprising both the phthalocyanine and quaternary ammonium compounds. According to the examiner, "any laundry or cleaning composition described by Hartman may contain a cationic softener; fabric softening compositions are not singled out by Hartman" (page 4 of Answer, last paragraph).

The fatal flaw in the examiner's position has been pointed out by appellants but, apparently, has not been fully understood by the examiner.¹ Namely, in the passage of Hartman cited by appellants and the examiner (column 4, lines 40 et seq.), Hartman describes three types of compositions which come under the heading of "laundry" composition, i.e., (1) detergent

Appeal No. 2002-1335
Application No. 09/618,870

further describes optional ingredients which may be useful for formulating laundry and cleaning compositions, it is reasonable to conclude that one of ordinary skill in the art would have understood that bleaching agents would be included in the detergent compositions and fabric softening compounds would be incorporated in either the rinse added fabric softener compositions or the dryer added compositions. The examiner has not pointed to any disclosure or suggestion in the reference for adding both the claimed phthalocyanine bleaching agents and quaternary ammonium fabric softeners in either a detergent composition or a fabric softening composition. Nor has the examiner explained why it would have been obvious for one of ordinary skill in the art to include the claimed phthalocyanine bleaching agents in a fabric softening composition, or, for that matter, why it would have been obvious for one of ordinary skill in the art to add the claimed quaternary ammonium compounds to a detergent composition comprising the claimed phthalocyanine bleaching agents. In the absence of such an explanation, the

Appeal No. 2002-1335
Application No. 09/618,870

(page 5 of Answer, first paragraph) avoids the question of which type of laundry composition the examiner is referring to.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
)	
)	
)	
TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
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)	
LINDA R. POTEATE)	
Administrative Patent Judge)	

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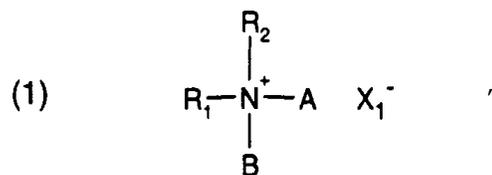
Appeal No. 2002-1335
Application No. 09/618,870

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Appeal No. 2002-1335
Application No. 09/618,870

APPENDIX

1. A rinse-added fabric softener composition comprising
 - (a) a water-soluble phthalocyanine of Zn, Fe(II), Ca, Mg, Na, K, Al, Si(IV), P(V), Ti(IV), Ge(IV), Cr(VI), Ga(III), Zr(IV), In(III), Sn(IV) or Hf(VI); and
 - (b) a quaternary ammonium compound of the formula

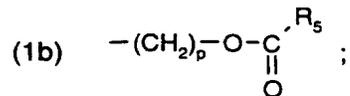
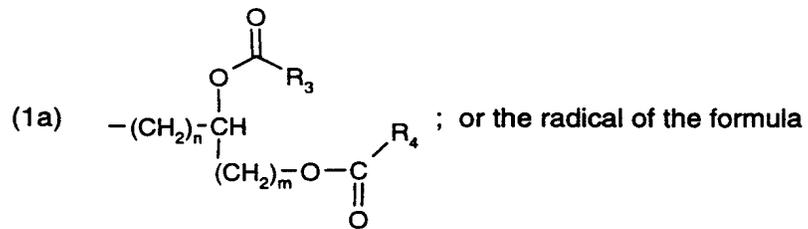


in which

R_1 and R_2 independently of one another are C_1 - C_5 alkyl; or hydroxy- C_1 - C_5 alkyl;

Appeal No. 2002-1335
Application No. 09/618,870

A is the radical of the formula



B is C₁-C₅alkyl; a C₈-C₂₀ fatty acid radical; the radical of the formula (1a) or the radical of the formula (1b);

R₃, R₄ and R₅ independently of one another are a C₈-C₂₀ fatty acid radical;

X₁⁻ is a softener-compatible anion;

and