

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN GRAHAM BLYTH,
ANDREW RUSSELL GRAYDON,
JULIAN DAVID MARTIN and COLIN STEPHENSON

Appeal 2007-0176
Application 11/050,553
Technology Center 1700

Decided: December 8, 2006

Before KIMLIN, WARREN, and TIMM, *Administrative Patent Judges*.
KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 4-13, 15, 16, and 18-25. Claim 1 is illustrative:

1. An auxiliary composition in particulate form for the laundering or treatment of fabrics, the auxiliary composition comprising:
 - a co-particulate admix of:
 - (i) clay;

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- (ii) silicone;
- (iii) a cationic polymeric fabric-softening boosting component; and
- (iv) optionally, one or more adjunct components;

wherein the auxiliary composition has a Flowability Index (FI) of from about 0.5 to about 21, wherein

$$FI = P \times R$$

wherein, P = the weight average primary particle size of the clay expressed in micrometers, and R = the weight ratio of silicone to clay.

The Examiner relies upon the following reference as evidence of obviousness:

Marteleur WO 92/07927 May 14, 1992

Appellants' claimed invention is directed to an auxiliary, particulate composition that is used to launder or treat fabrics, and the laundry detergent composition comprising the auxiliary composition. The auxiliary composition comprises a co-particulate admix of (a) clay, (b) silicone, and (c) a cationic polymeric fabric-softening boosting component, such as cationic guar gum.

Appealed claims 1, 2, 4-13, 15, 16, and 18-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO '927.

Appellants set forth separate arguments only for claims 15, 16, 24, and 25. Accordingly, claims 2, 4-13, and 18-23 stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary

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skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejection for essentially those reasons expressed in the Answer.

Appellants do not dispute the Examiner's factual determination that WO '927 discloses an auxiliary composition in particulate form for laundering or treating fabrics comprising an admixture of the presently claimed clay and silicone. Rather, it is Appellants' principal argument that the reference fails "to teach, suggest, or recognize the addition of a cationic polymeric fabric-softening boosting component to a co-particulate admix of an auxiliary composition (i.e., a fabric treatment composition) with clay and silicone, as required by the instant claims" (principal Br. 8, last sentence). While Appellants recognize that WO '927 discloses the addition of Appellants' preferred cationic polymeric fabric-softening boosting component, guar gum, to the detergent composition, Appellants maintain that the reference teaches adding the guar gum as a soil release agent to the *detergent composition*, but not to the fabric treatment composition. Appellants contend that the fabric treatment composition of the reference "is a distinct component of the detergent composition" (principal Br. 9, first paragraph).

At the outset, we note that the "comprising" language of claim 1 on appeal does not preclude the presence of a detergent composition in admixture with the recited clay, silicone, and cationic polymeric fabric-softening boosting component. Hence, we find that compositions within the

scope of claim 1 include those comprising a detergent composition, clay, silicone, and a cationic polymeric fabric-softening boosting component, as taught in the reference. Moreover, we fully concur with the Examiner that WO ‘927, at page 17, fourth and fifth paragraphs, clearly teaches the fabric treatment composition in granular form as an integral part of an applied detergent composition. While Appellants argue that the reference teaches an admixture of detergent compounds, not detergent compositions and fabric treatment composition, we note that the last paragraph of page 17 of the reference teaches the provision of granular detergent compositions that include the detergent compounds. We are satisfied that the reference disclosure fairly teaches to one of ordinary skill in the art that the detergent composition, comprising detergent compounds and additives like guar gum, can be applied in admixture with the fabric treatment composition. Appellants have advanced no reason why one of ordinary skill in the art would have interpreted the “detergent compositions” to not include the guar gum additive disclosed by the reference.

Furthermore, since it has been generally held that it is a matter of *prima facie* obviousness for one of ordinary skill in the art to alter the order of mixing various components of a composition,¹ we find that it would have been *prima facie* obvious for one of ordinary skill in the art to add the guar gum of WO ‘927 to the fabric treatment composition before adding it to the granular detergent compounds while integrally preparing the mixture of

¹ See *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946).

detergent compound and fabric treatment composition. As noted by the Examiner, Appellants attach no criticality to adding the cationic polymeric fabric-softening boosting component to the mixture of clay and silicone. Indeed, the Summary of Appellants' invention set forth in the Specification describes the charged polymeric fabric-softening boosting component as an optional component. While the Specification, at page 17, discloses that the boosting component is preferably contacted to the clay and silicone for improving the fabric-softening benefit performance of the auxiliary composition, the Specification fails to report any evidence of unexpected results. In any event, it is our view that WO '927 fairly teaches an integral admixture of fabric treatment composition and detergent composition comprising guar gum and other additives.

Regarding separately argued claims 15, 16, 24, and 25, which claims recite various properties of the guar gum, such as charge density and molecular weight, Appellants do not refute the Examiner's reasoning that commercially available guar gum would fall within the broad ranges for the properties recited in the claims. Rather, Appellants make the same argument that the reference does not teach such guar gum in the auxiliary composition. Appellants make no argument that the commercially available guar gum used in the detergent composition of WO '927 does not possess the charge density, weight average molecular weight, and average degree of cationic substitution that fall within the claimed ranges. Also, the preferences

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disclosed at page 10 of the Specification for the claimed properties would seem to allay any suggestion of criticality.

As a final point, we note that Appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the *prima facie* case of obviousness established by the Examiner.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2004).

AFFIRMED

clj

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