

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WALTER A. BIERCEVICZ,  
KENNETH P. MANZARI,  
PETER A. DIVONE,  
KIMBERLY ANN PRIEST,  
JOSEPH J. REGAN and MATTHEW JUNGBLUT

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Appeal 2007-0652  
Application 10/320,028  
Technology Center 1700

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Decided: February 28, 2007

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Before EDWARD C. KIMLIN, CHUNG K. PAK, and PETER F. KRATZ,  
*Administrative Patent Judges.*

KIMLIN, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-10 and 12-25.

Claim 1 is illustrative:

1. A process for manufacture of a personal care composition comprising:

- (i) forming a first aqueous phase portion of a personal care base composition in a first vessel;
- (ii) optionally forming a second phase portion of the personal care base composition in a second vessel;
- (iii) delivering via an electronically controlled servo-driven rotary pump the first aqueous phase into a blending tube, the first aqueous phase moving through the blending tube at a rate from about 5 to about 5,000 lbs. per minute;
- (iv) optionally delivering via a further electronically controlled servo-driven rotary pump the second phase when present into the blending tube, the second phase moving through the blending tube at a rate from about 5 to about 5,000 lbs. per minute;
- (v) mixing the first aqueous phase and, when present, the second phase within the blending tube;
- (vi) feeding a late variant addition phase into the mixed phases of the base composition downstream from the mixing in the blending tube, the late variant addition phase comprising a liquid material selected from the group consisting of a fragrance, a colorant, a promotional ingredient and mixtures thereof, to form a resultant personal care composition;
- (vii) delivering into and further blending the resultant personal care composition in a static mixer; and
- (viii) recovering the resultant personal care composition.

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

Pfening	US 1,984,595	Dec. 18, 1934
Kacher	US 5,674,511	Oct. 7, 1997
Phallen	US 5,996,650	Dec. 7, 1999
Lorenzi	US 2001/0018068 A1	Aug. 30, 2001

Billet et al., "Cavitation," AccessScience@McGraw-Hill,  
<http://www.accessscience.com>, DOI 10.1036/1097-8542.114900,  
last modified: Oct. 23, 2001.

Cornelis	US 2001/0051204 A1	Dec. 13, 2001
Bechtel	US 6,515,030 B1	Feb. 4, 2003

Appellants' claimed invention is directed to a process for manufacturing a personal care composition that comprise oil and water emulsions and variants, such as colors and fragrances. The aqueous phase is delivered by an electronically controlled servo-driven rotary pump from a first vessel into a blending tube, and then downstream from the blending tube, a so-called late variant addition phase, such as a liquid material comprising a fragrance or colorant, is fed into the base composition after it leaves the blending tube. Appellants explain in the Specification that when only a fragrance or color change is necessary in formulating a different product, turn around preparation, which includes cleaning the feed lines, is costly both in time and material (*see* page 2 of Specification). The present invention solves this problem by adding the variant, such as fragrance or color, downstream from the blending tube, thereby obviating the need to clean the blending tube and the vessel wherein the aqueous phase is

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formulated. Also, by adding the variants downstream from the homogenizing blender, "[t]he process is intended to protect temperature and shear sensitive additives such as fragrances and organic colorants" (page 4, Specification, para. [0008]).

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

- (a) claims 1-10, 12, and 13 over Lorenzi in view of Bechtel, Cornelis, Kacher, Phallen, and Billet,
- (b) claim 14 over Lorenzi in view of Bechtel, Cornelis, Kacher, Phallen, and Pfening,
- (c) claims 15, 17-22, 24, and 25 over Lorenzi in view of Bechtel, Cornelis, Phallen, and Billet,
- (d) claim 16 over Lorenzi in view Bechtel, Cornelis, Phallen, Billet, and Kacher, and
- (e) claim 23 over Lorenzi in view of Bechtel, Cornelis, Phallen, and Pfening.

Appellants do not present separate arguments for claims 1-10, 12, and 13 as a group, or for claims 15, 17-22, 24, and 25 as a group. Accordingly, the rejection of claims 1-10, 12, and 13 stands or falls together, as does the rejection of claims 15, 17-22, 24, and 25.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we fully concur with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellants do not dispute the Examiner's factual determination that Lorenzi, like Appellants, discloses the manufacture of a personal care composition by blending a first aqueous composition and a second, optional, composition in a homogenization device wherein variants, such as fragrances and colorants, are included in the composition. As recognized by the Examiner, Lorenzi does not expressly teach moving the first aqueous phase through a blending tube at the recited rate. However, we agree with the Examiner that Bechtel evidences the obviousness of formulating emulsions by moving the composition through a blending tube at the claimed rate for realizing the known advantages of a continuous process.

Also, the Examiner appreciates that Lorenzi does not teach the essence of the invention described in Appellants' Specification, namely, adding the variant ingredients, such as color and fragrance, at a stage downstream from the homogenizer. However, Appellants do not dispute the Examiner's factual finding that "[C]ornelis discloses adding a polyunsaturated fatty acid to an emulsion after emulsification (¶ 0062) and the addition of vitamins, minerals and trace elements after cooling the emulsion from 60°C to 5°C (¶ 0007-0009)" (page 5 of Answer, penultimate para.). Accordingly, we agree with the Examiner that it would have been obvious for one of ordinary skill in the art to modify the process of Lorenzi by adding the color and fragrance components downstream from the blender in order to realize the advantage taught by Cornelis, i.e., to minimally expose these variants to conditions that can cause degradation (*see* Cornelis at ¶ 0028).

We also agree with the Examiner that it would have been obvious for one of ordinary skill in the art, based on the Kacher disclosure, to blend the

final personal care composition in a static mixer. Manifestly, it is notoriously well-known to give a final mix to a product composition after all the ingredients have been added.

Also, we find no error in the Examiner's reliance on Phallen for establishing the obviousness of employing the claimed electronically controlled servo-driven rotary pump for delivering the first aqueous phase into the blending tube. It is evident from Appellants' Specification that the claimed rotary pump was conventional in the art at the time of filing the present application. Appellants tribute no unexpected result to the use of the known rotary pump.

As for separately rejected claim 14, we subscribe to the Examiner's reasoning that it would have been obvious for one of ordinary skill in the art to use the flow meter controlled mixing valve of Pfening in the manufacturing process in order to obtain the desired proportion of the individual liquids (*see* Pfening at col. 1, ll. 10-14).

Appellants, while recognizing that Lorenzi discloses homogenized personal care compositions, note that the compositions of reference Examples 1-89 are not homogenized. However, simply because Lorenzi discloses homogenized and non-homogenized personal care compositions does not undermine the obviousness of making homogenized compositions.

Appellants also emphasize that Lorenzi does not teach the concept of late variant addition, and Cornelis teaches late stage addition of variants to minimize their degradation to the harsh conditions of heating, drying, and homogenization. Appellants maintain that, in contrast, their "objectives were development of a manufacturing system suitable for producing variants of a base product with different color, fragrance, and/or promotional

ingredients" (page 13 of principal Br., last para.). However, as noted above, Appellants' Specification expressly discloses that "[t]he process is intended to protect temperature and shear sensitive additives such as fragrances and organic colorants" (page 4, Specification, para. [0008]). Hence, it can be seen that both Appellants and Cornelis share a common objective. Moreover, it is well-settled that finding an additional advantage of a feature disclosed by the prior art does not impart patentability to a known or obvious feature. *In re Dillon*, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990). Furthermore, it is not required for a finding of obviousness that the motivation of one of ordinary skill in the art be the same as an applicant's motivation. *In re Kemps*, 97 F.3d 1427, 1430, 40 USPQ2d 1309, 1311 (Fed. Cir. 1996). Also, we are satisfied that Appellants' solution to the problem of cleaning the entire system for only a simple color or fragrance change would have been readily apparent to one of ordinary skill in the art. *In re Ludwig*, 353 F.2d 241, 244, 147 USPQ 420, 421 (CCPA 1965).

Appellants also argue that the rotary pump of Phallen driven by a servo-motor was used subsequent to the manufacturing process, i.e., "the failing equipment did not handle delivery of individual components to a reactor" (page 15 of principal Br., last para.). However, we agree with the Examiner that it would have been obvious to one of ordinary skill in the art to employ the known pump of Phallen to accurately deliver a specific amount of ingredients to the reactor. Appellants have provided no factual support for the statement that "[a] significant break through of the present invention was appellant's realization that the servo-driven rotary pump approach could be applied to the manufacture of personal care compositions" (*id.*). Indeed, the present Specification attaches no particular

significance or criticality to the claimed use of an electronically controlled servo-driven rotary pump. We observe that no mention of the claimed rotary pump is found in the SUMMARY OF THE INVENTION in appellants' Specification. The Specification describes the invention as the later stage addition of variants. The Specification simply states that delivery of fluids from the tanks into the blending tube can be achieved with the rotary pumps to effect careful control of flow (*see page 9, para. [00027]*) This is the same advantage taught by Phallen.

Consequently, based on the collective teachings of the prior art cited by the Examiner, we find that it would have been obvious for one of ordinary skill in the art to perform the claimed process for manufacturing a personal care composition. We note that Appellants base no arguments upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, 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)(iv)(effective Sept. 13, 2004).

**AFFIRMED**

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Unilever Intellectual Property Group  
700 Sylvan Avenue  
Bldg. C2 South  
Englewood Cliffs, NJ 07632-3100