

The opinion in support of the decision being entered today  
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* ANDRESS KIRSTY JOHNSON  
and  
MEIYLIN FONG ANTEZZO

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Appeal 2007-0907  
Application 10/159,367  
Technology Center 1700

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Decided: August 22, 2007

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Before BRADLEY R. GARRIS, CHUNG K. PAK, and  
CHARLES F. WARREN, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the final rejection of claims 1-10, 12-15, and 17-23. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

The Appellants claim a cleaning and degreasing composition having low or zero volatile organic compounds which comprises a nonionic surfactant, a cationic surfactant, and a polyhydric alcohol having at least three free hydroxyl groups. According to Appellants, the use of polyhydric alcohol having at least three free hydroxyl groups avoids gelling issues, as does propylene glycol which is typically used in the prior art, while at the same time generating no recordable volatile organic compounds (Br. 4).

Representative claim 1 reads as follows:

1. A cleaning and degreasing composition having low or zero volatile organic compounds which comprises

- i) at least one nonionic surfactant, and
- ii) at least one cationic surfactant, represented by Formula I



wherein  $R_1$  is a linear or branched, saturated or unsaturated  $C_6-C_{22}$  alkyl group or aralkyl or  $R_5-[O(CH_2)_y]_m$ ;

$R_2$  is  $C_1-C_6$  alkyl group or  $R_1$ ;

$R_3$  and  $R_4$  are  $C_2-C_4$  random or block or homogeneneous polyoxyalkylene groups;

$R_5$  is a linear or branched, saturated or unsaturated  $C_1-C_{18}$  alkyl group, or hydrogen;

$m$  is integer from 1-20;

$y$  is 2 or 3 and

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X<sup>-</sup> is an anion

- iii) an effective amount of at least one polyhydric alcohol having at least three free hydroxyl groups, and
- iv) optionally, water.

The following references are relied upon by the Examiner as evidence of anticipation and obviousness:

Gosselink	EP 0,199,403 A2	Oct. 29, 1986
Johnson	US 6,462,014 B1	Oct. 8, 2002

Claims 1-10, 12, 17-19, and 23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gosselink.

All of the appealed claims are rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson.

Each of these rejections will be sustained for the reasons expressed in the Answer and below.

#### The § 102 Rejection

We base our decision to sustain this rejection on the Examiner's findings of fact and rebuttals to argument (Answer 3:5-7). We add the following comments for emphasis.

Many of the Appellants' arguments for novelty are unpersuasive because they concern matters to which claim 1 is not limited. For example, Appellants represent that Gosselink is not anticipatory because it is directed to a heavy-duty liquid detergent which contains anionic surfactant and soil

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release agent (Appeal Br. 8). As correctly pointed out by the Examiner, however, the “comprises” language of claim 1 does not exclude these alleged distinctions of Gosselink. Moreover, claim 1 plainly cannot be regarded as novel in these argued respects when the claim is given its broadest reasonable interpretation consistent with the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004).

We also find no convincing merit in the Appellants’ contention that the Examiner’s anticipation finding is improperly based on optional ingredients and isolated teachings in Gosselink (Appeal Br. 8:10). Like the Examiner, we find that Gosselink teaches preferences for ingredients such as nonionic surfactant and cationic cosurfactant which lead to the claim 1 composition (Gosselink, col. 10, ll. 38-56; col. 12, ll. 1-43; claim 11). Specifically regarding the claim 1 requirement for polyhydric alcohol having at least three free hydroxyl groups, this requirement is satisfied by 75% of Gosselink’s polyols which contain 2 to 6 hydroxy groups and more specifically by the glycerine member of the four polyol subclass exemplified by Gosselink (col. 16, ll. 17-25). See *In re Shaumann*, 572 F.2d 312, 316-17, 197 USPQ 5, 9-10 (CCPA 1978) and *In re Petering*, 301 F.2d 676, 681-82, 133 USPQ 275, 280 (CCPA 1962).

The Appellants additionally argue that Gosselink’s solvent system includes ethanol which is excluded from the claim 1 composition by the

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recitation “having low or zero volatile organic compounds.” It is true that Gosselink’s composition includes from about 2% to about 10% ethanol (Gosselink, col. 16, ll. 9-16). Nevertheless, the Examiner has reasonably determined that the lower ethanol amount of Gosselink’s range would be encompassed by the claim 1 language “having low . . . volatile organic compounds” (Answer 5). Under these circumstances, it is appropriate to require Appellants to prove that Gosselink’s composition with the lowest disclosed ethanol concentration does not actually possess the claim 1 characteristic of low volatile organic compounds since the Patent and Trademark Office is not able to manufacture products or to obtain and compare prior art products. *See In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977).

For the reasons set forth above and in the Answer, we share the Examiner’s finding that claim 1 is anticipated by Gosselink. The only other claims mentioned by Appellants in their arguments concerning this rejection are claims 20 and 23 (Appeal Br. 11). However, claim 20 is not included in this rejection, and Appellants have not identified with any reasonable specificity any alleged novelty in claim 23 beyond those discussed above with respect to claim 1. It follows that we hereby sustain the § 102 rejection of claims 1-10, 12, 17-19, and 23 as being anticipated by Gosselink.

### The § 103 Rejection

According to the Examiner, “[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a defoaming composition, as taught by Johnson . . . , which contained a hydrotrope, such as glycerine, because such foaming compositions fall within the scope of those taught by Johnson” (Answer 4).

In response, the Appellants argue that “Johnson clearly does not teach or suggest that the use of glycerine would result in a composition having low or no recordable VOC’s [i.e., volatile organic compounds]” (Br. 12). In the Appellants’ view, “since Johnson clearly did not recognize appellants’ problem; it would be unreasonable and improper to interpret Johnson as suggesting a solution to same” (*id.*; *see also* Reply Br. 7).

This argument is not persuasive because it is premised on the incorrect belief that an obviousness conclusion must be predicated on prior art teachings of the particular problem addressed by the inventor. As the Supreme Court has recently explained, in determining whether the subject matter of a claim would have been obvious, neither the particular motivation nor the avowed purpose of the inventor controls. What matters is the objective reach of the claim. If the claim extends to what would have been obvious, it is invalid under § 103. *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741-42, 82 USPQ2d 1385, 1397 (2007).

Thus, the Examiner’s obviousness conclusion is not improper simply because Johnson contains no teaching or suggestion of the VOC problem

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addressed by Appellants. On this record, the Johnson reference evinces a prima facie case of obviousness which the Appellants have not successfully rebutted with argument or evidence of nonobviousness. We hereby sustain, therefore, the Examiner's § 103 rejection of all appealed claims as being unpatentable over Johnson.

The decision of the Examiner 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).

AFFIRMED

clj

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