

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PASCAL SIMON

Appeal 2007-1135
Application 09/986,264
Technology Center 1600

Decided: September 6, 2007

Before DONALD E. ADAMS, LORA M. GREEN, and NANCY J. LINCK,
Administrative Patent Judges.

ADAMS, *Administrative Patent Judge.*

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 1-40 and 52-114.
The only remaining pending claims (claims 41-51) were withdrawn in
response to a restriction requirement. We have jurisdiction under 35 U.S.C.
§ 6(b).

INTRODUCTION

The claims are directed to a cosmetic article or product. Claims 1, 31, 52, 82, 95, 103, and 105 are illustrative:

1. A cosmetic article comprising: (a) a substrate; (b) a cosmetic composition associated with said substrate; (c) at least one breakable capsule associated with said substrate, said at least one breakable capsule containing a liquid; wherein upon breaking of said at least one breakable capsule, said liquid wets said cosmetic composition.

31. A cosmetic product comprising: (a) a container; (b) at least one cosmetic article disposed in said container, said at least one cosmetic article comprising: (i) a substrate; (ii) at least one breakable capsule associated with said substrate, said at least one breakable capsule including a liquid such that upon breaking of said at least one breakable capsule said liquid wets said substrate; and (c) wherein said container includes means for breaking said at least one breakable capsule.

52. A cosmetic article comprising: a first substrate layer; a second substrate layer; a third substrate layer; a first breakable capsule containing a liquid disposed between said first substrate layer and said second substrate layer; a second breakable capsule disposed between said second substrate layer and said third substrate layer, said second breakable capsule including a first material, and further wherein a second material is disposed between said second substrate layer and said third substrate layer, and wherein said first material and said second material are selected such that upon breaking of said second breakable capsule an exothermic reaction is produced and said exothermic reaction heats the liquid of said first breakable capsule.

82. A cosmetic article comprising: a first substrate layer; a second substrate layer, wherein said second substrate layer includes at least one moisture impermeable ply; a third substrate layer; a first breakable capsule disposed between said first substrate layer and said second substrate layer, said first breakable capsule containing a first liquid; a first cosmetic composition disposed such that upon breaking of said first breakable capsule, said first cosmetic composition is wetted by said first liquid; a second breakable capsule disposed between said second substrate layer and said third substrate layer.

95. A cosmetic article comprising: a substrate, said substrate including a first pocket and a second pocket; a first breakable capsule disposed in said first pocket, said first breakable capsule containing a first liquid; a second breakable capsule disposed in said second pocket; and a cosmetic composition disposed such that upon breaking of said first breakable capsule, said liquid wets said cosmetic composition.

103. A cosmetic article comprising: a substrate having at least one pocket therein, said at least one pocket including a breakable capsule containing a liquid, said article further comprising a cosmetic composition disposed such that upon breaking of said breakable capsule, said liquid wets said cosmetic composition, the substrate further comprising a holding portion for holding said article during use.

105. A cosmetic product comprising: a container; a cosmetic article disposed inside of said container, said cosmetic article, including a substrate and at least one breakable capsule disposed inside of said substrate; and wherein said container includes means for breaking said at least one breakable capsule.

The Examiner relies on the following prior art references to show unpatentability:

| | | |
|-------------|-----------------|---------------|
| Beck | WO 01/54661 A1 | Aug. 2, 2001 |
| Bechmann | US 6,508,604 B1 | Jan. 21, 2003 |
| Gruenbacher | US 6,669,387 B2 | Dec. 30, 2003 |

The rejections as presented by the Examiner are as follows:

1. Claims 1-40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck.
2. Claims 52-114 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher.

We affirm the rejection of claims 1-31, 35-40, 52-106, and 110-114. We reverse the rejection of claims 32-34 and 107-109.

DISCUSSION

Findings of Fact:

Bechmann teaches:

1. a cosmetic article comprising a substrate and at least one breakable liquid (e.g., a face cleaning lotion or cream, perfume, or medicament (Bechmann, Abstract)) containing capsule associated with the substrate (Answer 3).
2. that the “article comprises at least one capsule filled with an active composition associated with a substrate,” e.g., an absorbent material, wherein at “the time the user breaks the capsules, their contents spreads onto the absorbent material and the disposable article is ready to use” (Bechmann, col. 1, ll. 12-20; *see generally* Answer 3).

3. that liquid containing cells, associated with articles, can be broke thereby dispensing the liquid “in the cells to contact and optionally disperse onto a target surface for a variety of purposes” including
mixing different materials from different cells to cause a useful chemical reaction . . . exposing a reactive material to a fluid . . . to cause a useful chemical reaction where either the chemical composition or even the phase state of the end products of the reaction or the energy/heat flow of the reaction may be the useful endpoint sought; exposing a fluid or solid to the gaseous environment for the purpose of volatizing and distributing components of said fluids or solids.

(Bechmann, col. 3, ll. 16-20; *see generally* Answer 3.)

4. an easy opening means for each cell of the cell system that provides at least one peelable seal comprising a pull string (Bechmann, col. 7, ll. 42-45).
5. that the article can be packaged with an outer package element (e.g., a container) that is integrated to the disposable article (Bechmann, col. 7, ll. 61-63; Answer 3).

Beck teaches:

6. the placement of one or more chambers or compartments between the substrate layers to separate various article components from one another (Beck 36: 22-25; Answer 4). The “separated article components which provide a therapeutic or aesthetic or cleansing benefit may be released from the chambers in a variety of ways including, but not limited to . . . puncturing, popping, bursting, squeezing of the chamber . . .” (Beck 36: 26-30).

7. articles upon which a cleansing benefit is dispersed, are water-activated articles and “are therefore intended to be wetted with water prior to use” (Beck 56: 11-12; *see generally* Answer 4).
8. an article, suitable for personal care applications, that “consists of a two layer substrate sheet, a cleansing component disposed adjacent to the substrate sheet, and a therapeutic benefit component which is also disposed adjacent to the substrate sheet . . .” (Beck 2: 9-15; *see generally* Answer 4).
9. an article that comprises “one or more additional layers which one having ordinary skill in the art would recognize as separate and distinct from the first and second substrate layers yet which are attached to these layers at some point” (Beck 53: 30-32). The additional layers may “be referred to as consecutively numbered layers in addition to the two essential layers of the articles of the present invention, e.g., third layer, fourth layer, etc.” (Beck 54: 4-7).
10. that the articles comprise a cleansing component, e.g., a surfactant (Beck 13: 15-21; Answer 4).
11. that “it is preferred that the skin or hair is first contacted and cleansed with a surface of the article and is then contacted with another surface that contains the therapeutic benefit component” (Beck 55: 25-27).
12. that “the therapeutic benefit component is disposed on a surface of the first and/or second substrate layer in at least one location in a form selected from the group consisting of shapes, designs, logos, and combinations thereof” (Beck 23: 7-9; *see generally* Answer 4).

13. that “the separate layers of the substrate sheet can be manufactured to have different colors, thereby helping the user to further distinguish the surfaces” (Beck 12: 23-27).
14. that
each of the layers of the articles as well as the articles themselves may be made into a wide variety of shapes and forms including flat pads, thick pads, thin sheets, ball shaped implements, irregularly shaped implements. The exact size of the layers will depend upon the desired use and characteristics of the article and may range in surface area size from about a square inch to about hundreds of square inches.
(Beck 12: 28-32.)
15. “that the first and second substrate layers may be surface modified to form a single composite layer having 2 surfaces or sides with different textures. Thus, in effect, the substrate sheet can be construed as comprising a single composite layer with dual textured sides or surfaces” (Beck, 12: 12-13).
16. that “compounds which react exothermically when combined with water may also be optionally included in the articles of the present invention” (Beck 42: 25-26). For example, Beck teaches a skin cleansing and conditioning article that comprises, in addition to a cleansing component, aluminosilicate (Beck 96: 15-18). The aluminosilicate generates heat due to an exothermic reaction upon exposure to water (Beck 96: 18-19).
17. “additional layers are suitable for enhancing the overall grippability of the side of the article closest to the hand or other means of exerting mechanical action on the surface to be cleansed and therapeutically treated” (Beck 54: 1-3).

Gruenbacher teaches:

18. an applicator (e.g., a mitt, pad or wipe) with an internal cavity that contains a reservoir for a liquid, gel, or solid (e.g., water) that will distribute over the article's surface when the reservoir is burst (Answer 6). The reservoir "can be of any suitable size, configuration, and composition for the intended product to be dispensed and/or dispersed. Exemplary, but non-limiting products include liquids, gels, lotions, creams, flowable powders, flowable solids, or combinations thereof" (Gruenbacher, col. 4, ll. 20-25).
19. an applicator that comprises
 - a first side, a second side, and an internal cavity between said first and second sides. The applicator also comprises at least one opening and at least one substantially fluid-impervious barrier layer within the internal cavity adjacent at least one of the sides. The applicator also comprises a first rupturable, product-containing, flexible film reservoir comprising at least one co-extruded film. A product is released to the target surface upon application of pressure to said reservoir.

(Gruenbacher Abstract.) With reference to Figure 11, Gruenbacher exemplifies an article comprising two substrate layers separated by a fluid-impervious barrier, wherein a reservoir associated with one substrate (Gruenbacher, Figure 11; col. 16, l. 34 - col. 17, l. 14). Gruenbacher also teaches a barrier layer that can be included in the article to protect the user's hand from the solid or liquid contained in the reservoir (Answer 6).
20. an applicator that contains one or more pockets provided between the front outer surface and the front inner surface that are designed

to receive the fluid filled reservoir (Gruenbacher, col. 4, ll. 41-50;
see generally Answer 6).

The rejection of claims 1-40:

Claims 1-40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck.

In view of the combined teachings of Bechmann and Beck the Examiner concludes that it would have been prima facie obvious to a person of ordinary skill in the art at the time the invention was made to combine Beck's teachings of a cosmetic article wherein agents contained within chambers are released onto a substrate which is then wetted with water, with Bechmann's teaching of liquid containing capsules which would, when burst, wet the substrate as required by Beck (Answer 4-5).

Claim 1:

Appellant groups and argues claims 1-13, 24, 24, and 27-30 together; therefore these claims will stand or fall together. 37 C.F.R.

§ 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 1. Claim 1 is directed to a cosmetic article. The cosmetic article comprises three components:

- (a) a substrate;
- (b) a cosmetic composition associated with said substrate; and
- (c) at least one breakable liquid containing capsule associated with said substrate.

According to claim 1, when the breakable liquid containing capsule(s) are broken the liquid wets the cosmetic composition.

According to Appellant, “the main object of . . . Bechmann’s invention [is] to provide all of the ingredients in individual cells . . .” (Br. 4-5 (emphasis removed)). As to Beck, Appellant asserts Beck’s article is wetted “by immersion in water or by placing it under a stream of water” (*id.* (emphasis removed)). Therefore, Appellant asserts that unlike Bechmann, Beck does not want to control the amount of water applied to the substrate, to the contrary Beck teaches that the dry articles are immersed in, or placed in a stream of, water (*id.*). From this Appellant asserts that “Bechman and Beck are describing two entirely different inventions” (Br. 5-6 (emphasis removed)). Therefore, Appellant concludes that “the two publications would simply not have been combined because each disclosure is limited to their unique solutions and provide no indication whatsoever for the alleged combination proffered by the Office” (Br. 6).

Appellant’s arguments notwithstanding, we find that the preponderance of the evidence on this record supports the Examiner’s conclusion that claim 1 is prima facie obviousness in view of the combination of Bechmann and Beck.

The Federal Circuit has recognized that an “obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161, 82 USPQ2d 1687, 1690-1691 (Fed. Cir. 2007) (citing *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 82 USPQ2d 1385, 1395 (2007) (“The combination of familiar elements according to

known methods is likely to be obvious when it does no more than yield predictable results.”)).

On this record, we combine a teaching of an article comprising liquid containing capsules (Findings of Fact (FF) 1-3) with a teaching of an article comprising a substrate and capsules containing cosmetic or therapeutic materials, which after breaking the capsules and dispersing the capsules contents onto the substrate, the substrate must be contacted with water (FF 6 and 7). In our opinion, it would have been prima facie obvious to combine Bechmann and Beck to arrive at an article that has both cosmetic and liquid containing capsules so that once the cosmetic containing capsules are broken and the cosmetic dispersed onto the substrate, the liquid containing capsules can be utilized to wet the substrate. In our opinion, this combination is nothing more than the combination of familiar elements according to known methods which will yield a predictable results. *KSR Int’l*, 127 S. Ct. at 1739, 82 USPQ2d at 1395.

Accordingly, we affirm the rejection of claim 1 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck. Claims 2-13, 24, 25, and 27-30 fall together with claim 1.

Claim 14:

Appellant groups and argues claims 14-23 and 26 together; therefore these claims will stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 14. Claim 14 ultimately depends from and further limits the substrate and the “at least one breakable capsule” of claim 1.

As to the substrate, claim 14 requires that the substrate have a first layer and a second layer, wherein the first layer comprises two portions:

- (i) a first portion having a surfactant associated therewith and comprising indicia indicating that the first portion is for cleansing; and
- (ii) a second portion having a surfactant associated therewith in an amount that is less than the first portion.

As to the breakable capsule, claim 14 requires that the at least one breakable capsule comprises:

- (a) a first breakable capsule disposed adjacent to the first portion of the substrate for wetting the first portion; and
- (b) a second breakable capsule adjacent to the second portion of the substrate for wetting the second portion.

Appellant asserts that the arrangement defined by claim 14 is not taught by the combination of references relied upon by the Examiner. We disagree.

The combination of Bechmann and Beck teach a substrate and at least one breakable capsule (FF 1-3, 6 and 7; and discussion of claim 1, *supra*). As to the substrate, Beck teaches that the substrate has a first layer and a second layer (FF 8-10), wherein the first layer comprises two portions (FF 15):

- (i) a first portion having a surfactant associated therewith (FF 10) and comprising indicia indicating that the first portion is for cleansing (FF 12-14); and
- (ii) a second portion having a surfactant associated therewith in an amount that is less than the first portion (FF 12).

As to the breakable capsule, Bechmann teaches at least one breakable liquid containing capsule associated with a substrate (FF 1) that, when broken, spreads onto the absorbent material, thereby wetting the substrate (FF 2-3).

Based on this evidence we find that a person of ordinary skill in the art would recognize that Bechmann's liquid containing capsules can be associated with and used to wet Beck's substrate layers and the portions thereof. *See KSR*, 127 S. Ct. at 1741, 82 USPQ2d at 1396 (It is proper to "take account of the inferences and creative steps that a person of ordinary skill in the art would employ."). *See also id.* at 1742, 82 USPQ2d at 1397 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton."). Therefore, we find no error in the Examiner's rejection of claim 14. Accordingly, we affirm the rejection of claim 14 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck. Claims 15-23 and 26 fall together with claim 14.

Claim 31:

Appellant groups and argues claims 31 and 35-40 together; therefore these claims will stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 31. Claim 31 is drawn to a cosmetic product that comprises:

- (a) a container; and
- (b) at least one cosmetic article disposed in the container.

In addition, claim 31, requires that the cosmetic product comprises:

- (i) a substrate; and

(ii) at least one liquid containing breakable capsule associated with the substrate that, upon breaking of capsule(s), the liquid wets the substrate. Claim 31 also requires that the container provide a means for breaking the breakable capsule(s).

Appellant asserts that there is no description or suggestion in the combination of Bechmann and Beck “to provide a container including a container with ‘means for breaking said at least one breakable capsule’” (Br. 8).

As discussed above, the combination of Bechmann and Beck teach a cosmetic product comprising a substrate and at least one liquid containing breakable capsule associated with the substrate that, upon breaking of capsule(s), the liquid wets the substrate (FF 1-3, 6 and 7). In addition, Bechmann teaches a cosmetic article, including cells with at least one peelable seal comprising a pull string that is integrated with a container (FF 4 and 5). In our opinion, a person of ordinary skill in the art would appreciate that Beckmann’s peelable seal can be attached to the packaging element which is integrated into the article. Accordingly, we are not persuaded by Appellant’s assertion that Bechmann “does not [teach] a container with a means for breaking a capsule” (Br. 9). For the foregoing reasons we are not persuaded by Appellant’s assertion. Accordingly, we affirm the rejection of claim 31 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck. Claims 35-40 fall together with claim 31.

Claim 32:

Claim 32 depends from and further limits the breaking means of claim 31 to comprise an opening disposed in the container, wherein upon the passing of the cosmetic article through the opening, the cosmetic article is compressed to break the capsule(s).

We find that the combination of Bechmann and Beck fails to teach a container that, upon the passing of the cosmetic article through the opening of the container, the cosmetic article is compressed causing the capsule(s) to break. Accordingly, we reverse the rejection of claim 32 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck. Since claim 33 depends from claim 32, we reverse the rejection of claim 33 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck. Claim 34, provides a variation, wherein the means for breaking the capsules comprises a compartment with a lid, wherein the capsule(s) is broken by placing the article in the compartment and closing the lid. Since the combination of Bechmann and Beck fails to teach this arrangement of a compartment and lid for breaking the capsule(s), we reverse the rejection of claim 34 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck.

The rejection of claims 52-114:

Claims 52-114 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. In view of the combined teachings of Bechmann, Beck and Gruenbacher the Examiner concludes that it would have been prima facie obvious to a person of ordinary skill in the art at the time the invention was made to combine the

teachings of Gruenbacher with those of Bechmann and Beck “to prepare an article containing multiple layers, of both absorbent or permeable layers as well as barrier or impermeable layers further containing a liquid in a[n] internal reservoir to be distributed to the outer substrates to provide a cleansing article for various surfaces” (Answer 6).

Claim 52:

Appellant groups and argues claims 52-57, 64-75, and 77-81 together; therefore these claims will stand or fall together. 37 C.F.R.

§ 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 52. Claim 52 is drawn to a cosmetic article comprising:

- (i) first, second and third substrate layers;
- (ii) a first breakable capsule containing a liquid disposed between the first and second substrate layers;
- (iii) a second breakable capsule comprising a first material disposed between the second and third substrate layers;
- (iv) a second material disposed between the second and third substrate layers.

In addition, claim 52 requires that the first material and the second material are selected so that upon breaking the second breakable capsule an exothermic reaction is produced which heats the liquid of the first breakable capsule.

Appellant asserts that “there is no disclosure or suggestion to use . . . an exothermic reaction to heat the liquid in another capsule” (Br. 12). According to Appellant, the “positioning of the different materials and different breakable capsules within the multi-layer cosmetic article permits

the user to have the ability to wipe or cleanse with a heated cosmetic article” (*id.*). We are not persuaded by Appellant’s argument.

As discussed above, the combination of Bechmann and Beck teach a cosmetic article comprising at least one substrate layer and at least one breakable capsule (FF 1-3 and 6-8). Beck teaches an article comprising first, second and third substrate layers (FF 9). Beck teaches the placement of one or more chambers or compartments between the substrate layers to separate various article components from one another (FF 6). Like Beck, both Bechmann and Gruenbacher teach an article comprising breakable liquid containing capsules, chambers or compartments that will disperse the liquid onto, and thereby wet, the article when broken (FF 1, 2, and 18).

Accordingly, we find that the combination of Bechmann, Beck, and Gruenbacher teach both:

- (1) a first breakable capsule containing a liquid disposed between the first and second substrate layers;
- (2) a second breakable capsule comprising a first material disposed between the second and third substrate layers; and
- (3) a second material disposed between the second and third substrate layers.

In addition, Beck teaches an article which comprises compounds that react exothermically when combined with water (FF 16). Therefore, we find that the combination of Bechmann, Beck, and Gruenbacher teaches the selection of first and second materials; and the arrangement of these materials in capsules so that an exothermic reaction is produced which heats the liquid of the first breakable capsule. Accordingly, we find no error in the Examiner’s *prima facie* case of obviousness. In our opinion, a person of

ordinary skill in the art would have recognized that the subject matter of claim 52 is taught by the combination of Bechmann, Beck, and Gruenbacher. *See KSR*, 127 S. Ct. at 1741, 82 USPQ2d at 1396 (It is proper to “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”). *See also id.* at 1742, 82 USPQ2d at 1397 (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

On reflection, we affirm the rejection of claim 52 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. Claims 53-57, 64-75, and 77-81 fall together with claim 52.

Claim 58:

Appellant groups and argues claims 58-62 together; therefore these claims will stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 58. Claim 58 ultimately depends from and further limits the article of claim 52 by requiring that the first cosmetic composition is located in a first portion of the first substrate layer and the second cosmetic composition is located in a second portion of the first substrate layer.

Appellant asserts that “there is nothing in the combination of cited art for providing two compositions with different portions of the substrate layers” (Br. 26). We are not persuaded by Appellant’s argument. In addition, while Appellant asserts that “[b]ecause the ingredients can be applied separate from, e.g., a surfactant, the user can better control the amount of the additional ingredients to be applied . . . ,” this concept is taught by Beck (FF 8, 11, and 12).

As discussed above, the article of claim 52 would have been prima facie obvious to a person of ordinary skill in the art in view of the combination of Bechmann, Beck, and Gruenbacher. As further discussed above (*see* discussion of claim 14), the combination of Bechmann and Beck teaches an article wherein at least one substrate layer is separated into portions. In our opinion, the location of particular components on a first or second portion of an article taught by the prior art does not distinguish the claimed product from the prior art. *KSR*, 127 S. Ct. at 1741, 82 USPQ2d at 1396.

On reflection, we affirm the rejection of claim 58 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. Claims 59-62 fall together with claim 58.

Claim 63:

Appellant groups and argues claims 62, 63, 76, 88, 89, and 113 together; therefore these claims will stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 63. Claim 63 ultimately depends from and further limits the cosmetic article of claim 52 to further include

- (1) a surfactant; and
- (2) an effervescent composition which is wetted upon breaking the first breakable capsule(s) to enhance foaming of the surfactant.

According to Appellant, the combination of Bechmann, Beck, and Gruenbacher fails to teach an effervescent material which is wetted upon breaking the capsule to assist lathering of cleansing compositions associated with the substrate. We are not persuaded by Appellant's argument.

As discussed above, the combination of Bechmann, Beck, and Gruenbacher teach the cosmetic article of claim 52. The combination of Bechmann, Beck, and Gruenbacher also teaches a cosmetic article comprising a surfactant (FF 10) and an effervescent (e.g., a material that volatilizes or distributes components of fluids or solids) (FF 3). Accordingly, we find that the combination of Bechmann, Beck, and Gruenbacher teaches a cosmetic article as set forth in claim 52, and further comprises a surfactant and an effervescent that would necessarily enhance the foaming action of the surfactant.

On reflection, we affirm the rejection of claim 63 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. Claims 62, 76, 88, 89, and 113 fall together with claim 63.

Claim 82:

Appellant groups and argues claims 82-87 and 90-94 together; therefore these claims will stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 82. Claim 82 is drawn to a cosmetic article. The article comprises:

- (1) a first substrate layer;
- (2) a second substrate layer that includes at least one moisture impermeable ply; and
- (3) a third substrate layer.

The article also comprises:

- (a) a first breakable capsule disposed between said first substrate layer and said second substrate layer that contains a first liquid;

(b) a first cosmetic composition disposed such that upon breaking the first breakable capsule the first cosmetic composition is wetted by the first liquid; and

(c) a second breakable capsule disposed between said second substrate layer and said third substrate layer.

According to Appellant the combination of Bechmann, Beck, and Gruenbacher does not teach the arrangement set forth in claim 82 (Br. 23).

As discussed above, the combination of Bechmann, Beck, and Gruenbacher teaches a cosmetic article comprising at least three substrate layers (FF 8 and 9). In this regard, Gruenbacher teaches a fluid containing a reservoir associated with a first layer that is separated from a second layer by a liquid impervious barrier layer (FF 19). In this arrangement, a first cosmetic composition that is disposed on the first layer will be wetted by the first liquid when the liquid containing capsule(s) associated with that layer is broken. In addition, for the reasons set forth above, we find that the combination of Bechmann, Beck, and Gruenbacher teaches at least one additional (e.g., second) breakable capsule disposed between additional substrate layers (e.g., second and third substrate layers) (FF 1, 2, 6, and 20).

For the foregoing reasons we find that the article of claim 82 would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made in view of the combined teachings of Bechmann, Beck, and Gruenbacher. Accordingly, we affirm the rejection of claim 82 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. Claims 83-87 and 90-94 fall together with claim 82.

Claim 95:

Appellant groups and argues claims 95-102 and 114 together; therefore these claims will stand or fall together. 37 C.F.R.

§ 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 95. Claim 95 is drawn to a cosmetic article comprising a substrate that includes:

- (1) a first pocket;
- (2) a second pocket;
- (3) a first breakable capsule disposed in the first pocket, the first breakable capsule containing a first liquid;
- (3) a second breakable capsule disposed in said second pocket; and
- (4) a cosmetic composition disposed such that upon breaking of the first breakable capsule, the liquid wets the cosmetic composition.

According to Appellant, the claimed arrangement is not taught by the combination of Bechmann, Beck, and Gruenbacher (Br. 16-18).

As discussed above, the combination of Bechmann, Beck, and Gruenbacher teaches a cosmetic article comprising at least one substrate layer and at least one breakable capsule. Gruenbacher teaches a substrate that includes one or more pockets for the placement of reservoirs (e.g., breakable capsules) in each pocket (FF 20). Gruenbacher's reservoirs can be filled with a variety of materials, including *inter alia*, liquids, flowable powders, solids or combinations thereof (FF 18). In practice, the combination of Bechmann, Beck, and Gruenbacher teaches a cosmetic article comprising a dispersed cosmetic composition that is wetted by breaking a liquid containing capsule. Accordingly, we find no error in the Examiner's prima facie case of obviousness.

On reflection, we affirm the rejection of claim 95 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. Claims 96-102 and 114 fall together with claim 95.

Claim 103:

Appellant groups and argues claims 103 and 104 together; therefore these claims will stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 103. Claim 103 is drawn to a cosmetic article comprising:

- (1) a substrate having:
 - (a) at least one pocket therein that includes a breakable capsule containing a liquid; and
 - (b) a holding portion for holding the article during use; and
- (2) a cosmetic composition disposed such that, when the liquid containing capsule is broken, the liquid wets the cosmetic composition.

Appellant asserts that the combination of Bechmann, Beck, and Gruenbacher does not teach the claimed arrangement (Br. 19-20). We are not persuaded by Appellant's assertion.

As discussed above with regard to claim 95 the combination of Bechmann, Beck, and Gruenbacher teaches a cosmetic article comprising at least one pocket that contains a liquid containing capsule, wherein a cosmetic composition is disposed in such a manner that, when broken, the liquid from the capsule(s) wets the cosmetic composition. In addition, the combination of Bechmann, Beck, and Gruenbacher teaches a substrate layer that enhances the grippability of the article closest to the hand, e.g., a holding portion for holding the article during use (FF 17). Accordingly, we find no error in the Examiner's prima facie case of obviousness.

On reflection, we affirm the rejection of claim 103 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. Claim 104 falls together with claim 103.

Claim 105:

Appellant groups and argues claims 105, 106, and 110-112 together; therefore these claims will stand or fall together. 37 C.F.R.

§ 41.37(c)(1)(vii). Accordingly, we limit our discussion to representative claim 105.

Claim 105 is drawn to a cosmetic product comprising a:

(1) container that includes means for breaking said at least one breakable capsule, and

(2) cosmetic article that includes a substrate and at least one breakable capsule disposed inside of the substrate.

For the reasons set forth with regard to claim 31 above, we find no error in the Examiner's prima facie case of obviousness.

Appellant directs attention to the argument made with regard to claim 31 and asserts that Gruenbacher "doesn't provide any more suggestion, motivation or disclosure for the arrangement claimed in [c]laim 105" (Br. 23-24). For the reasons set forth with regard to claim 31 we are not persuaded by Appellant's assertion.

Accordingly, we affirm the rejection of claim 105 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher. Claims 106 and 110-112 fall together with claim 105.

Claims 107-109:

Claim 107 depends ultimately from and further limits the container of claim 105 to comprise a first compartment and a breaking means. The first compartment is for storing at least one article, and includes a first lid. The breaking means includes a second compartment, disposed inside of the first lid, for breaking the capsule(s) and a second lid. According to the claim, when the cosmetic article is disposed in the second compartment the capsule(s) are broken by closing the second lid. Claim 108 is a variation of claim 107 that requires the means for breaking to include an aperture that extends through the container and serves to break the capsule(s) when the article passes through the aperture. Claim 109 depends from claim 108.

We find that the combination of Bechmann, Beck, and Gruenbacher fails to teach a cosmetic product having the arrangement of components set forth in claims 107-109. Accordingly, we reverse the rejection of claims 107-109 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann, Beck, and Gruenbacher.

CONCLUSION

In summary, we affirm the rejection of claims 1-31, 35-40, and 52-102, 105, 106, and 110-114.

We reverse the rejection of claims 32-34 and 107-109 under 35 U.S.C. § 103(a) as unpatentable over the combination of Bechmann and Beck.

As a result of this Decision, claims 32-34 and 107-109 are free from rejection based on the record before us.

Appeal 2007-1135
Application 09/986,264

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

AFFIRMED-IN-PART

Ssc

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