UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte INGEGARD JOHANSSON, BO KARLSSON,
CHRISTINE STRANDBERG, GUNVOR KARLSSON,
and KARIN HAMMARSTRAND

Appeal 2008-3507
Application 11/129,457
Technology Center 1700

Decided: July 29, 2008

Before TERRY J. OWENS, JEFFREY T. SMITH, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1, 4-10 and 17-34, which are all of the pending claims.

THE INVENTION

The Appellants claim a cleaning composition and method. Claim 7 is illustrative:

7. An aqueous alkaline composition having a pH-value above 11 which comprises

a) 3-50% by weight of a an [sic] alkaline complexing agent,

b) 0.05-30% by weight of a surface active nonionic alkylene oxide adduct having a hydrocarbon group or an acyl group of from 8 to 24 carbon atoms and having at least one primary hydroxyl group in the alkoxylated part of the molecule,

c) 0.04-30% by weight of a hexyl glycoside,

d) 20-97% by weight of water.

THE REFERENCES

Kaniecki	US 4,240,921	Dec. 23, 1980
Schmid	US 5,205,959	Apr. 27, 1993

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 102(b) as follows: claims 1, 4-10 and 17-34 over Schmid, and claims 1, 4-10, 17-22 and 27-30 over Kaniecki.

OPINION

We reverse the Examiner's rejections. We need to address only the independent claims, i.e., claims 1, 7, 17 and 18. Claim 1 requires that "said composition comprises 3-50% of an alkaline complexing agent", claim 7 requires "3-50% by weight of a an [sic] alkaline complexing agent, and claims 17 and 18 claim cleaning methods using the claim 7 composition.

"Anticipation requires that every limitation of the claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference." *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1255-56 (Fed. Cir. 1989).

Rejection over Schmid

Schmid discloses a cleaning composition comprising a complexing agent which may be an alkali metal orthophosphate (col. 5, ll. 41-43).[1] Schmid does not disclose the concentration of complexing agent in the composition.

The Examiner does not provide evidence as to the concentration of complexing agent one of ordinary skill in the art would have used in Schmid's composition.[2] Instead, the Examiner relies upon Schmid's sodium hydroxide, which is present in an exemplified amount of 90% of a 50 wt% NaOH solution (col. 5, ll. 50-53; col. 5, l. 65 – col. 6, l. 4; examples), as corresponding to the Appellants' alkaline complexing agent (Ans. 5).

The Appellants argue that Schmid's sodium hydroxide is not an alkaline complexing agent (Br. 7; Reply Br. 1-2).

The Examiner responds that sodium hydroxide is an alkaline complexing agent "as defined by applicant on page 7, lines 8-17 of the instant specification" (Ans. 5).

That portion of the Appellants' Specification discloses:

[1] Sodium orthophosphate is one of the Appellants' alkaline complexing agents (Spec. 7: 9-11).
[2] Hence, the issue of whether the Appellants' claimed invention would have been obvious to one of ordinary skill in the art under 35 U.S.C. § 103 is not before us.

> The alkali hydroxide in the composition is preferably sodium or potassium hydroxide. The alkaline complexing agent can be inorganic as well as organic. Typical examples of inorganic complexing agents used in the alkaline composition are . . . sodium orthophosphate. . . . (Spec. 7)

Thus, the Appellants' Specification indicates that the alkali hydroxide, which can be sodium or potassium hydroxide, and the alkaline complexing agent, which can be sodium orthophosphate, are different components. That difference is further indicated in the Specification at page 4, line 3, which discloses a composition containing "3-50% by weight of alkali hydroxide and/or alkaline complexing agents".

Moreover, Schmid indicates that his complexing agent and alkali are different components ("The cleaning products . . . may contain . . . complexing agents, alkalis or acids . . ." (col. 5, ll. 28-33)). Schmid lists exemplary complexing agents and then lists exemplary alkalis (col. 5, ll. 41-53).

Furthermore, the Examiner has not provided evidence that sodium hydroxide is capable of functioning as a complexing agent in Schmid's composition.

For the above reasons we find that the Examiner has not established a prima facie case of anticipation of the Appellants' claimed invention over Schmid.

Rejection over Kaniecki

Kaniecki discloses a cleaning composition containing from about 10% to about 35 % by weight of alkali metal hydroxide (col. 2, ll. 56-58). The

composition can contain a chelating agent, but all of the disclosed chelating agents are acids (col. 4, ll. 30-38).[3]

As with the rejection over Schmid, the Examiner argues that Kaniecki's sodium hydroxide corresponds to the Appellants' alkaline complexing agent (Ans. 5).

Kaniecki does not disclose that the sodium hydroxide can function as a complexing agent, and the Examiner has provided no evidence to that effect.

Consequently, the Examiner has not established a prima facie case of anticipation of the Appellants' claimed invention over Kaniecki.

DECISION

The rejections under 35 U.S.C. § 102(b) of claims 1, 4-10, and 17-34 over Schmid, and claims 1, 4-10, 17-22, and 27-30 over Kaniecki are reversed.

REVERSED

[3] Hence, the Examiner's argument that Kaniecki's "composition additionally contains other alkaline complexing agents, such as organophosphorous compounds (see col. 4, lines 26-41)" (Ans. 6) is incorrect.

PL initials:
sld

AKZO NOBEL INC.
INTELLECTUAL PROPERTY DEPARTMENT
120 WHITE PLAINS ROAD, SUITE 300
TARRYTOWN, NY 10591