The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-MARIE MILLEQUANT, CAROLINE TRICAUD,
and ANNE GABORIAUD

Appeal No. 1997-0699
Application No. 08/217,659

HEARD: February 08, 2001

Before, WALTZ, KRATZ, and PAWLIKOWSKI, Administrative Patent Judges.

KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 21-38 as amended after final rejection. No other claims are pending in this application.

BACKGROUND

Appellants' invention relates to a granulated composition for bleaching hair including pulverulent material such as sodium persulfate or other material selected from a given list thereof and a method of preparing same. The granules have a

particle size range of 65-800 microns and are bound together with a binder consisting essentially of polypropylene glycol having a molecular weight selected to be within a specified range. According to appellants, their granulated composition may be handled without substantially any irritant dust formation and readily dissolved in hydrogen peroxide (specification, pages 3 and 4). A further understanding of the subject matter at issue in this appeal may be derived by a review of appealed claims 21 and 33, which are reproduced below.

> 21. A granulated composition for bleaching hair comprising granules of a pulverulent material comprising a member selected from the group consisting of sodium persulfate, potassium persulphate, ammonium persulfate, sodium perborate, potassium perborate, ammonium perborate, barium peroxide, strontium peroxide and mixtures thereof, said granules having a particle size ranging from 65 Fm to 800 Fm and being bound together with a binder consisting essentially of polypropylene glycol having a molecular weight ranging from 200 to 10,000, said binder being present in said composition in an amount not exceeding 25 percent by weight based on the total weight of said composition.
>
> 33. A process for preparing a granulated composition for bleaching hair comprising granules of a pulverulent material comprising a member selected from the group consisting of sodium persulfate,

potassium persulfate, ammonium persulfate, sodium perborate, potassium perborate, ammonium perborate, barium peroxide, strontium peroxide and mixtures thereof, said process comprising

preparing a moving bed of said pulverulent material so as to granulate said pulverulent material,

spraying on said moving bed of said pulverulent material a binder consisting essentially of polypropylene glycol having a molecular weight ranging from 200 to 10,000, said binder being in the form of a solution in a solvent selected from the group consisting of a C_1-C_4 alcohol, methylene chloride, ethylene chloride and mixture thereof,

and removing said solvent so as to produce said granules of said granulated composition, said granules having a size ranging from 65 Fm to 800 Fm and said binder being present in an amount not exceeding 25 percent by weight based on the total weight of said composition.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Wurster 3,089,824 May 14, 1963
Clausen et al. (Clausen) 5,279,313 Jan. 18, 1994
(application filed Dec. 12, 1991)

Claims 21-38 stand rejected under 35 U.S.C. § 103 as being unpatentable over Clausen in view of Wurster.

OPINION

We have carefully considered all of the arguments advanced by appellants and the examiner and agree with appellants that the aforementioned rejection is not well founded. Accordingly, we shall not sustain the examiner's rejection.

In applying Clausen and Wurster to appellants' claims, the examiner takes the position that it would have been obvious to one of ordinary skill in the art to modify the granulating composition and process of making the composition of Clausen by employing polyethylene glycol as a binder therein so as to arrive at the claimed invention. From our perspective, the examiner's explanation falls significantly short of establishing that one of ordinary skill in the art would have been led to modify the Clausen granulating process for forming a solid portion of a hair bleaching preparation by using polyethylene glycol granulating material therein as a binder based on the disclosure of that material in Wurster as a diluent or disintegration agent useful in granulating medicament-containing seed particles for subsequent tablet formation.

In addition to the difficulty we have with the examiner's reasoning regarding the motivation to combine the disparate teachings of Clausen and Wurster, we observe that the examiner's answer does not even address much less specifically point out where either of the applied references teach or suggest the use of polypropylene glycol as a binder for use in a granulation process or composition as claimed herein.

All of the appealed claims require polypropylene glycol to be present in the composition as a binder or used in the method for making the composition. On this record, however, the examiner has not proffered satisfactory supporting evidence or a convincing rationale that specifically addresses how the applied references would have taught or suggested a granulated composition including granules of the specified size and made of both a pulverulent material as claimed and the polypropylene glycol binder.

The unsupported generalities relied upon by the examiner are simply not enough to sustain an obviousness determination. Where, as here, the factual basis to support the legal conclusion of obviousness is lacking, the proposed rejection must be reversed.

CONCLUSION

The decision of the examiner to reject claims 21-38 under 35 U.S.C. § 103 as being unpatentable over Clausen in view of Wurster is reversed.

REVERSED

THOMAS A. WALTZ Administrative Patent Judge	)	
PETER F. KRATZ Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
BEVERLY A. PAWLIKOWSKI Administrative Patent Judge	)	

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APPEAL NO. - JUDGE KRATZ
APPLICATION NO.

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APJ

DECISION: **ED**

Prepared By:

DRAFT TYPED: 26 Sep 01

FINAL TYPED: