

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LOUIS R. MAZZOLA

Appeal No. 1997-3350
Application No. 08/522,164

ON BRIEF

Before CAROFF, WARREN, and WALTZ, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the examiner's final rejection of claims 1-14. Subsequent to the final rejection, appellant elected to amend claim 1 and cancel claim 9. Accordingly, the claims before us are claims 1-8 and 10-14.

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Similar claims are under appeal in related applications 08/436,182 (Appeal No. 97-3332) and 08/449,956 (Appeal No. 97-3389).

The instant claims, like those in the related applications, are directed to a laundry detergent composition which includes, inter alia, a nonionic ethoxylated alcohol surfactant and an anionic ethoxylated alcohol sulfate salt as a second surfactant. In addition, the present claims call for the inclusion of a polyethylene glycol (PEG). Claim 1 is representative:

1. A powder laundry detergent composition with improved cold water residue properties, which is a granulated blend of ingredients consisting essentially of (1) between about 40-90 weight percent of a water-soluble detergent builder ingredient wherein at least 72 weight percent of the detergent builder ingredient is sodium carbonate; and (2) between about 5-40 weight percent of a detergent active ingredient which is a surfactant blend comprising (a) between about 40-80 weight percent, based on the surfactant weight, of an anionic salt compound corresponding to the formula:



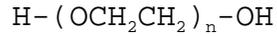
where R is a C₁₀-C₁₅ alkyl group, n is an average number of ethoxylate groups between about 1-9, and M is an alkali metal or ammonium cation, (b) between about 20-60 weight percent, based on surfactant weight, of a nonionic compound corresponding to the formula:



where R is a C₁₀-C₁₅ alkyl group, and n is an average number of ethoxylate groups between about 1-9; and (c) between about 5-

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30 weight percent, based on the surfactant weight, of a polyethylene glycol constituent corresponding to the formula:



where n is an average number of ethoxylate groups between about 20-240; (3) between about 0.5-10 weight percent of water-soluble inorganic potassium salt; and (4) less than about 5 weight percent of phosphate salt.

The prior art references relied upon by the examiner on appeal are:

Boucher et al. (Boucher)	5,180,515	Jan. 19, 1993
Mazzola	5,482,646	Jan. 9, 1996
	(effective filing date: Mar. 5, 1993)	
Pepe et al. (Pepe)	5,415,806	May 16, 1995

All of the appealed claims stand rejected for obviousness under 35 USC § 103 in view of either Boucher alone or, alternatively, in view of Mazzola taken in combination with Pepe.

Upon careful consideration of the entire record in light of the opposing positions advanced on appeal, we find that the issues presented are not ripe for a decision on the merits. Accordingly, we shall remand this application to the examiner to address the following matters.

First, with regard to the rejection based upon the Boucher reference, we note that at least some of appellant's

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claims require that the subject composition include PEG in an amount of "between about 5-30 weight percent, based on the surfactant weight" (underlining added for emphasis).¹

Boucher includes PEG as an additive in exemplified compositions (Examples I-VI), but the Boucher disclosure apparently does not indicate its intended function in the laundry detergent composition.

Before we can determine the question of obviousness with regard to PEG content, an apparent inconsistency between the positions of the examiner and the appellant needs to be resolved. Appellant states in his brief (p. 11-12) that "the Examples I-IV detergent compositions in Boucher et al. have a polyethylene glycol weight percent content of 1.4%, respectively, and Examples V-VI have a polyethylene glycol weight percent content of 3.4 and 1.7, respectively, based on the weight of surfactant". Appellant does not explain how he arrived at these figures.

On the other hand, according to the examiner's answer

¹ Claims 12-14 do not require that the weight percent of PEG be based upon surfactant weight.

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(p. 10), appellant's claims require inclusion of PEG in an amount of 0.25-12% by weight based on the composition as a whole. The examiner then goes on to conclude that "Boucher has a polyethylene [sic:PEG] content of 0.58-3.4% by weight which is within the range of the polyethylene glycol required by the instant application". The examiner does not explain where he obtained these figures in Boucher or how he derived them. Moreover, the examiner has failed to explain why any of the specific PEG percentages given in the Boucher examples would fall within the scope of appellant's claimed range, based on surfactant weight, even if the Boucher percentages happen to fall within a range calculated based upon the composition as a whole.

In view of the foregoing, we remand the application to the examiner and require that he take appropriate action consistent with current examining practice and procedure to resolve the deficiencies noted above with respect to the question of obviousness relating to PEG content. The examiner is further required to communicate his findings on this issue to appellant for appropriate response, and if appellant responds, to further respond as necessary via a supplemental

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examiner's answer, as permitted under 37 CFR § 1.193(b)(1)(1997), with a view toward placing this application in a condition appropriate for a decision on appeal.

Second, with regard to the rejection based upon the combination of Mazzola and Pepe, we note that both the instant application and the Mazzola reference appear to have the same inventive entity; that is to say Louis R. Mazzola is the sole inventor in both instances. Under these circumstances, the Mazzola reference does not appear to qualify as "prior art" under any of the provisions of 35 USC § 102 and, therefore, does not constitute a proper basis for rejection under 35 USC § 103. However, the claims of the reference may, in combination with the Pepe reference, constitute a basis for rejection under the judicially-created doctrine of obviousness-type double patenting.

Accordingly, the Mazzola-Pepe rejection is reversed to the extent that it is based upon 35 USC § 103, and we remand the application to the examiner to consider whether an obviousness-type double patenting rejection would be appropriate in this case.

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For the foregoing reasons, we hereby remand this application to the examiner, via the Office of a Director of the involved Technology Center, for appropriate action in view of the above comments.

This application, by virtue of its "special status", requires immediate action on the part of the examiner. See MPEP § 708.01 (7th ed., Rev. 1, Feb. 2000). It is important that the Board of Patent Appeals and Interferences be promptly informed of any action affecting the appeal in this case.

REMANDED

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MARC L. CAROFF)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES F. WARREN)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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)	
THOMAS A. WALTZ)	
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APJ CAROFF

APJ WARREN

APJ WALTZ

DECISION: REMANDED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s):

Prepared: September 24, 2001

Draft Final

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