

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH M. HALLAM
and
HOWARD N. ROBINSON

Appeal No. 2000-1541
Application 08/608,954

ON BRIEF

Before WILLIAM F. SMITH, ROBINSON, and MILLS, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 14 through 17, all the claims pending in the application. The claims read as follows:

14. A method for stimulating hair growth on the scalp by topically applying to the scalp, effective amounts of a topical composition consisting essentially of 0.1-5% procaine and 0.01-5% niacin in a topical hydrophilic vehicle for said procaine and niacin.

15. A topical composition for stimulating hair growth on the scalp, the composition

consisting essentially of a combination of niacin and procaine hydrochloride in a pharmaceutically acceptable carrier containing propylene glycol for penetrating the scalp and for carrying the niacin and procaine hydrochloride therewith.

16. The composition of claim 15, wherein the niacin ranges from 0.01 to 5% of the total composition, and the amount of procaine hydrochloride ranges from 0.1 to 5% of the total composition.

17. The composition of claim 15, wherein the pharmaceutically acceptable carrier further includes a carrier chosen among the group consisting of lanolin, butyl alcohol, absolute alcohol, isopropyl alcohol and dimethyl sulfoxide, or a combination of two or more of these carriers.

The reference relied upon by the examiner is:

Szegö et al. (Szegö)	4,329,338	May 11, 1982
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In addition, the examiner relies upon so-called admissions in the specification at page 7, lines 32-45 and page 8, lines 8-30.

Claims 14 through 17 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Szegö and the above-identified admissions. We reverse.

DISCUSSION

The claimed invention is directed to a method for stimulating hair growth on the scalp and compositions useful therefore which comprise procaine and niacin (nicotinic acid). The examiner relies upon Szegö as teaching nicotinic acid as known to be a vasodilator which may be used topically to stimulate the scalp and hair roots. In the

sentence bridging pages 4-5 of the Examiner's Answer, the examiner indicates that appellants have admitted that procaine is known to stimulate hair growth and has been administered topically. The examiner has concluded that since nicotinic acid and procaine were known individually to promote hair growth and to be useful topically, the combination of the two agents would have been obvious to one of ordinary skill in the art. We disagree.

Szegö describes compositions useful as cosmetics in which the active agent is the reaction product of nicotinic acid and a polyhydroxy compound. It is those active agents which are described in the reference as being useful for stimulating scalp or hair bulbs. The only mention in the reference directed to nicotinic acid per se is at column 1, lines 10-13, where Szegö acknowledges that nicotinic acid exerts a vasodilating effect. Szegö does not indicate that nicotinic acid per se is useful in stimulating hair growth.

The admissions relied upon by the examiner are in fact statements in the specification which summarize certain prior art documents. Neither appellants nor the examiner have placed the full text documents in the record. Thus, we have only reviewed the synopsis of the documents provided in the specification.

The synopsis appearing at page 7, lines 32-45 only indicates that solutions of niacin and procaine hydrochloride have been used for intravenous administration to treat a number of conditions which appellants characterize as not including hair loss. Appellants

represent that the document discloses that nicotinic acid has a vasodilating effect. The second synopsis relied upon by the examiner appears at page 8, lines 8-30 which in actuality is two different documents. The first document is represented to describe a study involving a patient who after forty years of alopecia showed hair growth after intravenous procaine therapy. The second document is represented to describe a composition which contains a synergistic combination of a number of ingredients including procaine which is “apparently applied topically to improve hair characteristics, but not necessarily hair growth.”

Simply put, the evidence relied upon by the examiner does not support the conclusion that persons of ordinary skill in this art understood at the time of the present invention that topical application of procaine and nicotinic acid would serve to stimulate hair growth on the scalp. Any attribution in Szegö that active agents are useful in stimulating scalp or hair bulbs is for the active agent of that reference, not nicotinic acid per se. The so-called admissions set forth in the specification relied upon by the examiner, at best, establish that intravenously administered procaine resulted in hair growth in a single individual. The examiner has not established on this record that the evidence relied upon reasonably teaches that topical application of nicotinic acid and procaine would expectedly result in stimulating hair growth or that merely administering to the scalp

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compounds which are known to have vasodilating effects will necessarily stimulate hair growth.

The decision of the examiner is reversed.

REVERSED

WILLIAM F. SMITH
Administrative Patent Judge

DOUGLAS W. ROBINSON
Administrative Patent Judge

DEMETRA J. MILLS
Administrative Patent Judge

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