

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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 WILLEM ANTHEUNISSE, CORNELIS PAUL VAN DER LOGT,
NEIL JAMES PARRY, and TON SWARTHOFF

Appeal No. 2004-0290
Application No. 09/742,692

ON BRIEF

Before KIMLIN, WALTZ and TIMM, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-24, all the claims pending in the present application. Claim 1 is illustrative:

1. Enzymatic bleaching detergent composition comprising a bleaching enzyme capable of generating a bleaching chemical and having a high binding affinity for stains present on fabrics, said enzyme comprising an enzyme part capable of generating a bleaching chemical which is coupled to a reagent having a high binding affinity for stains present on fabrics, wherein the pI of

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the reagent having the high binding affinity is lower than the pH of an aqueous wash solution comprising 1 g/l of the composition.

In the rejection of the appealed claims, the examiner relies upon the following reference:

Beggs et al. (Beggs) WO 98/56885 Dec. 17, 1998

Appellants' claimed invention is directed to an enzymatic bleaching detergent composition comprising an enzyme having a part that is capable of generating a bleaching chemical, such as hydrogen peroxide, and such part is coupled to a reagent having a high binding affinity for stains present on fabrics. Also, the pI (isoelectric pH) of the reagent is lower than the pH of an aqueous solution comprising 1 g/l of the detergent composition. According to appellants, "[t]he detergent compositions of the invention are particularly attractive to treating 'problem stains' which occur only occasionally, such as tea, red-wine, and blackberry juice" (page 7 of principal brief, second paragraph).

Appealed claims 1-24 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as being unpatentable over Beggs.

Appellants submit at page 10 of the principal brief that "[a]ll claims stand or fall together." Accordingly, all the appealed claims stand or fall together with claim 1, and we will

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limit our consideration of this appeal to the examiner's rejection of claim 1.

We have thoroughly reviewed each of appellants' arguments set forth in the principal and reply briefs on appeal. However, we are in complete agreement with the examiner that the claimed subject matter is unpatentable over the cited prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

There is no dispute that Beggs, having the same assignee as appellants, discloses an enzymatic bleaching detergent composition comprising an enzyme having a part capable of generating a bleaching chemical and which is coupled to a reagent having a high binding affinity for stains present on fabrics, including stains caused by tea, blackberry juice and red wine. As acknowledged by the examiner, Beggs is silent with respect to the pI of the reagent having high binding affinity for the stains. However, we agree with the examiner that since Beggs discloses the same antibodies of bispecific reagents of peptides and polypeptides as reagents having high binding affinity for the stains, the reagents would inherently have the same pI as that recited in claim 1 on appeal. We note that claim 1 does not

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require any specific concentration of the detergent composition, including an aqueous solution comprising one g/l of the detergent composition. Rather, claim 1 recites a property of the reagent when it is used in an aqueous wash solution comprising the specified concentration of the detergent composition.

We concur with the examiner that the principal espoused in In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) supports the examiner's rejection. In particular, when a claimed composition reasonably appears to be substantially the same as a composition disclosed by the prior art, the burden is on the applicant to prove that the prior art composition does not necessarily or inherently possess characteristics attributed to the claimed composition. See also In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). In the present case, based on the broad overlapping nature between the class of enzymes embraced by appealed claim 1 and the class of enzymes disclosed in Beggs, we find it reasonable to conclude that enzymes within the Beggs disclosure possess the claimed pI. Significantly, appellants' specification and Beggs provide identical descriptions for "[t]he bleaching enzyme" and for "[t]he enzyme part, capable of generating a bleaching chemical" (compare pages

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5 et. seq., of the specification with pages 4 et. seq., of Beggs). In addition, for "[t]he part having the high binding affinity," the present specification and Beggs provide nearly identical descriptions. For example, both the specification and Beggs disclose the same antibodies, peptides, pepidomimics and other organic molecules. The only distinction in the disclosures of the part having the high binding affinity is that appellants' specification includes two additional paragraphs describing the pI of the reagent having the high binding affinity. Accordingly, since there appears to be vast overlap between the operable enzymes disclosed in appellants' specification and Beggs, it is incumbent upon appellants to clearly establish a patentable distinction between the claimed and referenced enzymes, i.e., appellants must specify particular enzymes that are within the scope of the appealed claims but not fairly taught by Beggs. Indeed, who is in a better position than appellants to establish on this record any claimed enzymes that are not fairly taught by Beggs. As noted above, appellants and Beggs share the same assignee, namely, Unilever Home and Personal Care USA, Division of CONOPCO, Inc. However, appellants can only offer that "Beggs does not appear to disclose the same antibody part, or other stain-binding parts as those utilized in the present invention"

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(page 12 of principal brief, second paragraph, emphasis added). Appellants repeat in their reply brief the argument that "Beggs does not appear to disclose the same antibody part, or other stain-binding parts as those utilized in the present invention" (page 2, second paragraph, emphasis added). Manifestly, this speculation on the part of appellants falls far short of establishing the requisite clear line of demarcation between enzymes within the scope of claim 1 and those fairly disclosed by Beggs.

As for appellants' argument that Beggs does not suggest any dependency or relationship between the pI value of the stain-binding part of the enzyme and the pH of the wash solution, it is not necessary for the reference to disclose such a property of the enzyme that is inherently possessed. Also, the question arises, based on the close correspondence between appellants' and Beggs disclosure, how one of ordinary skill in the art would be enabled to select enzymes having the claimed pI without resorting to undue experimentation. Totally lacking in appellants' principal and reply briefs is any argument that an actual specific enzyme, or class of enzymes, is not within the Beggs disclosure.

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In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

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

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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THOMAS A. WALTZ)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
CATHERINE TIMM)	
Administrative Patent Judge)	

EK/RWK

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