

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RASHESH N. PATEL

Appeal No. 1999-0823
Application No. 08/728,337

ON BRIEF

Before KIMLIN, WARREN and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-16 and 18-21. Claim 1 is illustrative:

1. A liquid, alkaline detergent composition consisting essentially of, by weight of said composition:

(a) from about 0.01% to about 10% diacyl peroxide having the general formula:

RC(O)OO(O)CR1

wherein R and R1 can be the same or different;

Appeal No. 1999-0823
Application No. 08/728,337

(b) from about 20% to about 90% solvent having a solubility parameter value outside about ± 4 of said diacyl peroxide's solubility parameter; and

(c) from about 0.01% to about 10% chelant, said chelant selected from the group consisting of sodium, potassium, lithium, ammonium and substituted ammonium salts of ethylenediamine tetraacetic acid, ethylenediamine disuccinic acid, nitrilotriacetic acid, tartarate monosuccinic acid, tartarate disuccinic acid, oxydisuccinic acid, carboxymethyloxysuccinic acid, mellitic acid, sodium benzene polycarboxylate salts, nitrilotris(methylene phosphonic acid), diethylenetrinitrilopentakis(methylenephosphonic acid), 1-hydroxyethane-1,1-diphosphonic acid, ethylene-N,N'-bis(o-hydroxy-phenylglycine), dipiolic acid, diethylene triamine penta(methylene phosphonate), hexamethylene diamine tetra(methylene phosphonate), ethylenediaminetetracetic acid, ethylenetriamine pentacetic acid, ethylenediamine-N,N'-disuccinic acid, iminodiacetic acid derivatives, ethylene diphosphonic acid, organo phosphonic acid, and mixtures thereof;

wherein said composition has a neat pH from about 7 to about 13; and wherein said diacyl peroxide is undissolved in said liquid, alkaline detergent composition.

The examiner relies upon the following references as evidence of obviousness:

Kamel et al. (Kamel)	5,230,822	Jul. 27, 1993
Van Dijk et al. (Van Dijk)	5,246,612	Sep. 21, 1993

Appellant's claimed invention is directed to a liquid, alkaline detergent composition, such as dishwasher detergent, which consists essentially of a diacyl peroxide of the recited formula, a solvent having a solubility parameter outside the diacyl peroxide's solubility parameter and a chelant. The diacyl peroxide is undissolved in the liquid detergent composition.

Appeal No. 1999-0823
Application No. 08/728,337

Appealed claims 1-7, 9-16 and 18-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kamel. Claims 1-16 and 18-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kamel further in view of Van Dijk.

Appellant has not separately argued any particular claim on appeal. Accordingly, the examiner has properly held that all the appealed claims stand or fall together. As a result, our consideration of this appeal is limited to the examiner's rejection of claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner's analysis and application of the prior art, as well as her cogent disposition of the arguments raised by appellant. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the Answer, which we adopt as our own, and we add the following for emphasis only.

Appellant asserts at page 2 of the Brief that "[t]he truly novel and unobvious feature of this invention is that the diacyl peroxide does not require a wax coating to remain stable, nor do the other components of the detergent composition such as enzymes or surfactants require a coating to be protected from the diacyl peroxide" (last paragraph). However, the examiner properly

Appeal No. 1999-0823
Application No. 08/728,337

states at page 2 of the Answer that appellant's specification "never excludes such wax coatings, and never states that this is a novel and unobvious feature of the claimed invention" (page 2 of Answer, last paragraph). Rather, at page 2 of appellant's specification, it is stated that although diacyl peroxides have been used in the art in the laundry and anti-acne area, they have not been used in the alkaline liquid or automatic dishwasher detergent area. The specification further states that "[i]t has now been discovered that DAPs [diacyl peroxides] can improve stain removal performance of ADDs [automatic dishwashing detergents] on plastics" (page 2, lines 31-32). Furthermore, the examiner has appropriately noted that the specification discloses at page 11 that "[t]here are numerous waxy materials which can readily be used to form suitable coated particles of any such otherwise incompatible components" (lines 19-20).

Accordingly, although appellant emphasizes that Kamel discloses a wax coating on the diacyl peroxide, the examiner has properly found that the appealed claims do not preclude a wax coating on the recited diacyl peroxide, notwithstanding the claim language "consisting essentially of." Claim language must be read in light of the specification and appellant's specification gives no indication that the diacyl peroxide should be free of a

Appeal No. 1999-0823
Application No. 08/728,337

wax coating. Indeed, as noted above, the specification, at page 11, indicates that appellant contemplates the use of waxy materials as a coating on incompatible components of the detergent composition, such as diacyl peroxide. Moreover, we agree with the examiner that appellant has not demonstrated on this record that the inclusion of a wax coating on the claimed diacyl peroxide would materially affect the basic nature of the claimed composition as a liquid, alkaline detergent. While appellant asserts that compositions comprising a waxy coating "would not have a negligible amount of streaking and spotting on the washed tableware" (page 6 of Brief, second paragraph), appellant's specification provides no nexus between wax-free components and the asserted "spotlessness advantages such as enhanced glass care (i.e. reduction of cloudiness and iridescence negatives)" (page 3 of specification, lines 3-4). Also, we agree with the examiner's analysis that appellant's specification provides no definition of the asserted "spotlessness advantages" and "provides no Examples which show the degree of spotting obtained with the claimed compositions" (page 7 of Answer, second paragraph). Consequently, appellant has offered no factual basis for comparing the "spotlessness advantages" with the standardized, objective results for spotlessness reported by

Appeal No. 1999-0823
Application No. 08/728,337

Kamel (see Kamel at EXAMPLE IV and Figure 2). We concur with the examiner's assessment that it would appear that the results for Kamel's test for spots "would fall within the 'spotlessness advantages' as described in Applicant's specification, i.e. negligible to no spotting occurs with Kamel's compositions" (page 7 of Answer, last paragraph).

Regarding the examiner's 35 U.S.C. § 103 rejection over Kamel in view of Van Dijk, appellant has not refuted the examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to use the particular bleach catalysts disclosed by Van Dijk in the detergent of Kamel. In essence, it is appellant's position that Van Dijk does not remedy the argued deficiencies of Kamel. We note that claim 1, with which all the appealed claims stand or fall, does not require a bleach catalyst.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

Appeal No. 1999-0823
Application No. 08/728,337

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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CHARLES F. WARREN)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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JEFFREY T. SMITH)	
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Appeal No. 1999-0823
Application No. 08/728,337

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