

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MYRIAM MELLUL AND DIDIER CANDAU

Appeal No. 1999-0997
Application 08/397,141

ON BRIEF

Before ROBINSON, ADAMS, and GRIMES, Administrative Patent Judges.

GRIMES, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 14-27, all of the claims remaining in the application.

Claim 14 is representative and reads as follows:

14. A cosmetic composition for the skin or nails, comprising a dispersion of solid organic particles in a binder, wherein at least a portion of the organic particles are introduced into the composition in the form of particles whose surface is coated with at least one cationic polymer.

The examiner relies on the following reference:

Guillon et al. (Guillon) 4,492,686 Jan. 08, 1985

Claims 14-27 stand rejected under 35 U.S.C. § 102(b) as anticipated by Guillon.

Claims 14-27 also stand rejected for obviousness-type double patenting over claims 1-7 of Guillon.

We reverse both rejections.

Background

Various cosmetic compositions are formulated as a dispersion of solid pigment particles in a fatty binder. Specification, page 1, lines 7-13. The preparation and use of such compositions, however, poses several problems, including “the difficulty of obtaining stable dispersions, so as to apply, for example to the skin, a regular make-up whose application is uniform and which retains a good homogeneity.” Page 1, lines 36-39.

Appellants’ specification discloses that the properties of such compositions are improved when the surfaces of the solid organic pigment particles are coated with a cationic polymer before the particles are introduced into the composition. Page 3, lines 1-7. Specifically, such compositions “hav[e] good properties of stability and adhesion to the skin” and nails. Id.

The specification discloses that the particles can be coated with polymer using any of several known methods. Pages 29-30. Whatever method is used,

however, the amount of cationic polymer applied is relatively small compared to the amount of pigment. “[T]he upper limit of the quantity of cationic polymer is sufficiently low for the particles to retain their individuality and their shape. In other words, the cationic polymer forms, at most, one thin (optionally lacunar) layer on the coated particles.” Page 5, lines 4-8.

Discussion

The examiner rejected all of the claims as anticipated by the disclosure of Guillon and barred by the doctrine of obviousness-type double patenting by the claims of Guillon. (Guillon and the instant application share the same assignee.) The instant claims are directed to a cosmetic composition containing “organic particles” (i.e., pigment particles) which are introduced into the composition “in the form of particles whose surface is coated with at least one cationic polymer.” That is, the claimed composition comprises organic particles made up of a core of pigment coated with a layer of cationic polymer.

Guillon discloses and claims cosmetic compositions comprising pigment and a cationic polymer. In Guillon’s composition, however, the cationic polymer does not form a thin layer on the coated particles, as in the instantly claimed compositions. Rather, the cationic polymer is chemically reacted with the pigment, so that pigment molecules are bound to the polymer via a salification reaction. See column 1, lines 57-61 (“These new colored pigments result essentially from the salification reaction between an acid dye, or its salt, and a polymer having salified primary or secondary amine functions or quaternized tertiary amine functions.”).

According to Guillon:

The colored pigments or colored polymers used in the compositions of the present invention are obtained by reacting . . . a solution of an acid dye or a salt thereof and a solution or dispersion of a polymer . . . so that the dye is fixed on the basic sites of the polymer.

. . .

After the reaction, the resulting product is filtered and washed. . . .

The resulting colored pigment is dried and before use in a cosmetic composition, it can be previously ground to an appropriate granulometry.

Column 6, line 60 to column 7, line 9.

“Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim.” Gechter v. Davidson, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). “Every element of the claimed invention must be literally present, arranged as in the claim.” Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

We do not agree that Guillon discloses every limitation of the instant claims. Guillon’s disclosure makes clear that the pigment particles disclosed therein are homogeneous mixtures of pigment molecules and polymer. This structure is inherent in the disclosed method of making what Guillon discloses as “colored pigments or colored polymers.” Column 6, line 60. That is, the dye is reacted with the polymer “so that the dye is fixed on the basic sites of the polymer;” i.e., the dye molecules are chemically bonded to reactive sites along the length of the polymer. The “colored polymer” is then dried and ground, producing what could only be homogenous particles of “colored polymer.”

The instantly claimed compositions, while they also comprise pigment and cationic polymer, are not homogenous. The specification and claims clearly define the particles as having a layer of cationic polymer coated on the surface of the particles. This rather central aspect of the claims is not disclosed by Guillon. Guillon therefore does not anticipate, and we reverse the rejection under 35 U.S.C. § 102(b).

The examiner also rejected the instant claims for obviousness-type double patenting over the claims in Guillon. We reverse this rejection as well. As discussed above, Guillon does not disclose coating pigment particles with a layer of cationic polymer. The claims in Guillon also do not recite such coated particles, nor does Guillon suggest pigment particles coated with a layer of cationic polymer. The examiner has not adequately explained why the instant claims are obvious over or not patentably distinct from the claims of Guillon. Therefore, we reverse the double patenting rejection.

Summary

We reverse the anticipation rejection because Guillon does not identically disclose the claimed compositions and we reverse the obviousness-type double patenting rejection because the instantly claimed compositions are patentably distinct from those claimed by Guillon.

REVERSED

Douglas W. Robinson)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Donald E. Adams)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
)	
Eric Grimes)	
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