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Mossman, Kumar and Tyler, PC P.O. Box 421239 Houston, TX 77242			DITRANI, ANGELA M	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JIANG YANG

Appeal 2010-002690
Application 11/351,018
Technology Center 3600

Before HUBERT C. LORIN, JEFFREY T. SMITH, and
GEORGE C. BEST, *Administrative Patent Judges*.

PER CURIAM.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from a final rejection of claims 1, 3-7, 13, 15-18, and 20-22.¹ We have jurisdiction under 35 U.S.C. § 6. The Examiner maintains and Appellant requests review of the rejections of claims 1, 3-7, 13-18, and 20-22 under 35 U.S.C. § 102(b) as anticipated by Ramachandran (U.S. Patent Application No. 2004/0177968 A1); claims 1, 3-6, 13-18, and 20-22 under 35 U.S.C. § 102(b) as anticipated by Wu (U.S. Patent 5,565,416); claims 1, 3-6, 13-18, and 20-22 under 35 U.S.C. § 102(e) as anticipated by Gatlin (U.S. Patent Application No. 2005/0250666 A1); and claim 7 under 35 U.S.C. § 103(a) as obvious over Gatlin. (App. Br. 7).

OPINION

Appellant argues that the issue presented for our review is whether the references (Ramachandran, Wu, and Gatlin) teach a composition containing an alkyl glucoside. (App. Br. 8).² It is undisputed that each of the references discloses compositions comprising nonylphenol ethoxylates. (*Id.*). However, Appellant argues that “[i]t was the Appellant’s intention to claim some compounds that were obviously glucosides and polyglucosides, and other compounds that included glucoside and/or glucoside moieties but had other functionality that would naturally dominate the name of the class of compounds.” (*Id.* at 9).

¹ Claim 2, 14 and 19 have been canceled. (App. Br. 3)

² In addressing each of the appealed rejections, Appellant repeats the same argument. (*See* Appeal Brief generally).

The Examiner properly determined that Specification paragraph [0018] provides a definition for alkyl glucoside. Paragraph [0018] is reproduced below:

[0018] The first component of the foaming composition of the invention is an alkyl glucoside, which operates as a nonionic surfactant. In certain embodiments[,] the alkyl glucoside has from about 1 to about 5 glucoside units[] and an alkyl chain length of from about 8 to about 18. Such an alkyl glucoside includes, in one embodiment, polyglucosides. *Nonlimiting examples of polyglucosides include* alkyl polyglucosides based on C₈-C₁₈ fatty alcohols, including capryl glucoside, decyl glucoside, cocoglucoside, and lauryl glucoside; *primary alcohol alkoxyates such as nonylphenol ethoxyates and octylphenol ethoxyates*; combinations thereof, and the like.

(emphasis added).

Appellant is entitled to be his or her own lexicographer and may clearly provide a definition of the term that is different from its ordinary and customary meaning(s). *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (explaining that an inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” and, if done, must “set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change” in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88 (Fed. Cir. 1992)). Where an explicit definition is provided by the applicant for a term that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consol. Indus. Inc.*, 199 F.3d 1295, 1301 (Fed. Cir. 1999)

In the present case, it is clear that Appellant intended to include primary alcohol alkoxyates such as nonylphenol ethoxyates in the

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definition of alkyl glucoside. Accordingly we affirm the Examiner's rejections.

ORDER

The rejections of claims 1, 3-7, 13, 15-18, and 20-22 are affirmed.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED

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