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UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100			OGDEN JR, NECHOLUS	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* GABRIELA WIS-SUREL  
and TEANOOSH MOADDEL

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Appeal 2011-000304  
Application 11/899,045  
Technology Center 1700

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Before CATHERINE Q. TIMM, MARK NAGUMO, and  
KAREN M. HASTINGS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-14 under 35 U.S.C. § 103(a) as unpatentable over Vermeer (US 5,501,812, issued Mar. 26, 1996). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

Claim 1 is illustrative of the claimed subject matter:

1. A toilet bar having an iridescent continuous phase and an ordered, layered microstructure, comprising:

a. at least 10% by wt. of a soap;

b. about 0.1 to about 20% by wt. of total C8 to C24 ethoxylated alcohol(s) with a ratio of methylene number to ethoxyl number in the range of 12 to 1.2;

c. wherein the ratio of ethoxylated alcohol(s) concentration to ethoxyl number is less than 2.3; and

d. wherein the ratio of total bound water in the toilet bar to water bound to the soap is greater than 1.0.

Appellants do not separately argue any of the claims rejected herein (Br. 5-8). Accordingly, we select claim 1 as representative.

#### ANALYSIS

“On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.”

*In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (emphasis omitted).

After thorough review of the respective positions provided by Appellants and the Examiner, we AFFIRM the § 103(a) rejection on appeal for essentially the reasons presented by the Examiner, including the Response to Argument section (Ans., mailed June 21, 2010). We add the following primarily for emphasis.

Appellants' main argument that the claimed soap bar is nonobvious because Vermeer does not disclose or suggest "at least one of the claim elements of iridescence, an ordered layer microstructure, and the ratio of total bound water to water bound to soap" (Br. 6) is unavailing as it merely conclusory and fails to sufficiently point out any error in the Examiner's findings and analysis. Likewise, Appellant's mere conclusion that "Vermeer does not provide the necessary enablement" for one to prepare the inventive toilet bar (Br. 6) is not persuasive error since a reference is presumed to be enabling. *In re Sasse*, 629 F.2d 675, 681 (CCPA 1980) (it is applicant's burden to demonstrate non-enablement of a reference).

Appellants do not dispute the Examiner's finding that Vermeer teaches a toilet bar having all the recited ingredients within the recited amounts (Ans. 5; Br. *generally*; no Reply Brief has been filed). Appellants also do not dispute the Examiner's finding that Vermeer teaches Appellants' preferred ethoxylated alcohol surfactant (Neodol 25-7) and that "surfactants are known to induce layered microstructure inherently and further induce lamellar phases" (Ans. 6). As the Examiner points out, Appellants' Specification teaches that it is the Neodol 25-7 ethoxylated alcohol that is the main ingredient responsible for the iridescent property (Ans. 6, 7).

Appellants have also not specifically disputed with any credible evidence or persuasive technical reasoning the Examiner's reasonable determination that since Vermeer teaches the same ingredients and water in an amount that overlaps all of Appellants' preferred amounts of water, it would have been reasonably expected that Vermeer encompasses a similar ratio of total bound water to water bound to soap as recited in claim 1 (Ans. 7; Br. *generally*).

In a case such as this, where patentability rests upon a property of the claimed material not disclosed within the art, the PTO has no reasonable method of determining whether there is, in fact, a patentable difference between the prior art toilet bar soap and the claimed toilet bar soap. Thus, the burden properly falls to the Appellants to prove that the prior art toilet bar soap does not necessarily possess the recited properties. *In re Best*, 562 F.2d 1252, 1254-55 (CCPA 1977).

In sum, Appellants have not provided any credible evidence or persuasive technical reasoning to refute the Examiner's reasonable determination that Vermeer's teachings encompasses a toilet bar that would have resulted in the recited characteristics, nor have they provided any evidence of secondary indicia of nonobviousness, such as unexpected results.

Accordingly, a preponderance of the evidence of record supports the Examiner's § 103 rejection on appeal.

We affirm the Examiner's decision to reject all of the pending claims.

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

AFFIRMED

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