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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEFAN FREY, LAURENCE GERET, JUDITH PREUSCHEN,
and RALF WIEDEMANN

Appeal 2015-000090
Application 12/519,670
Technology Center 1700

Before PETER F. KRATZ, MARK NAGUMO, and
N. WHITNEY WILSON, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1, 2, 4–7, 10–23, 25, and 26. We have jurisdiction pursuant to 35 U.S.C. § 6.

Appellants' claimed invention is directed to a detergent composition including at least one biodegradable builder, a surfactant, and disclosed sources of preferred metal ions comprising at least one source of zinc ions and at least one source of bismuth ions (Spec. 11, l. 20 – 12, l. 15). A method for washing kitchenware with the composition is also claimed.

Claim 1 is illustrative and reproduced below:

1. A detergent composition comprising:

- (i) at least one surfactant,
- (ii) at least one biodegradable builder present in an amount of from 30-70 wt.% and,
- (iii) at least one source of zinc ions and at least one source of bismuth ions.

App. Br. 9 (Claims Appendix).

The Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Haerer et al.	5,888,954	Mar. 30, 1999
Chang	US 2003/0158078 A1	Aug. 21, 2003
Nitsch et al.	US 2004/0116319 A1	June 17, 2004
Song	US 2006/0069001 A1	Mar. 30, 2006
Hahn et al.	GB 2 402 132 A	Dec. 1, 2004

The Examiner maintains the following grounds of rejection:

Claims 1, 2, 4-7, 10-15, 18-23, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Song in view of Hahn. Claims 1, 2, 4-7, 10-15, 18-23, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Haerer in view of Hahn. Claims 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Song in view of Hahn and Nitsch. Claims 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Song in view of Hahn and Chang.

Appellants' arguments are insufficient to identify harmful error in the Examiner's obviousness rejections. *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011).

Accordingly, we affirm the stated obviousness rejections for substantially the fact findings and reasoning set forth by the Examiner in the

Examiner's Answer and in the Non-final Office Action appealed from (Ans. 3–12; Non-Final Act. 2–11). We offer the following for emphasis.

Concerning the Examiner's first and second stated rejections, Appellants argue the rejected claims together as a group (App. Br. 3–6). We select claim 1 as the representative claim on which we decide this appeal as to these two grounds of rejection.

Regarding the obviousness rejection over Song and Hahn, Appellants argue that “[t]he Examiner has provided no reason, other than a general statement, of why a skilled artisan would have chosen the presently claimed elements from the teachings in Song” and that “*[n]ot a single one of Song[a]’s examples teaches even the combination of a surfactant, biodegradable builder and a zinc and bismuth mixture*” (App. Br. 5 and 6).

However and as found by the Examiner, Song does teach or suggest a detergent composition that can include (a) a biodegradable builder, such as citrates and/or polycarboxylates, (b) a surfactant, and (c) at least one polyvalent metal source selected from metals, such as bismuth (Bi) and/or zinc (Zn) (Non-final Act. 2–4; Ans. 3–4; Song ¶¶ 44, 25, 15, 15).

Furthermore, the Examiner relies on Hahn for a specific teaching respecting the combined use of zinc and bismuth in a dishwashing detergent for protecting glassware from corrosion (Non-final Act. 3; Ans. 4; Hahn, Abstract, pp. 5–7, 12, claims). Appellants do not persuasively articulate why one of ordinary skill in the art would not have been led to the claimed subject based on the combined teachings of the applied references. In particular, Appellants contend that the Examiner's rejection falls short in establishing an apparent reason to modify Song's composition because “Song provides absolutely no hint or suggestion that the presently claimed

composition would be able to achieve improved washing characteristics” (App. Br. 4). However, the latter argument does not specifically address the Examiner’s rationale for the modification of Song based upon the combined teachings of Song and Hahn (Non-Final Act. 4, 8, 9; Ans. 4–5, 9–10)). In this regard, Hahn teaches that using a combination of zinc and bismuth in the detergent composition provides for glassware protection during the washing of dishes (Abstract, pp. 5–10; 20, 21).

Moreover and contrary to Appellants’ argument in the Reply Brief, Song suggests that a combination of metals may be employed in the dishwasher detergent by describing the use of mixtures of metal compounds, which would include a combination of zinc and bismuth (Reply Br. 1; Song ¶ 15). In any event, the combined teachings of the applied references would have suggested the use of a mixture of zinc and bismuth in the detergent composition to one of ordinary skill in the art, as set forth above.

Consequently, Appellants’ arguments fail to show harmful error in the Examiner’s first stated obviousness rejection of representative claim 1.

For similar reasons to those addressed above with respect to the Examiner’s first stated rejection and for reasons as set forth by the Examiner (Ans. 5–7 and 11–12), Appellants’ arguments concerning the Examiner’s obviousness rejection over the combined teachings of Haerer and Hahn that focuses on the use of a combination of zinc and bismuth in the detergent composition of representative claim 1 lacks persuasive merit (App. Br. 6–7; Reply Br. 2–3). Appellants do not persuasively articulate why it would not have been obvious to modify the dishwashing detergent composition of Haerer in light of the teachings of Hahn so as to be able to wash both silverware and glassware together while minimizing corrosion of both the

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silverware and glassware based on the combined teachings of Haerer and Hahn.

It follows that we shall affirm the Examiner's obviousness rejection over Haerer and Hahn and the obviousness rejection over Song and Hahn.

As for the Examiner's obviousness rejections of dependent claims 16 and 17 over Song in view of Hahn and either Chang or Nitsch, Appellants focus on limitations pertaining to claim 1, including the zinc and bismuth limitations of claim 1, rather than arguing against the latter rejections based on the additional features set forth in these dependent claims (App. Br. 7).

It follows that we shall also sustain the latter rejections.

CONCLUSION

The Examiner's decision to reject the appealed claims is affirmed.

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