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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HAEWON JEONG, HAKCHAN KIM, JOOHO KIM,
CHANGGYU YOO, and JIYOUNG PARK

Appeal 2015-001482
Application 12/681,435
Technology Center 3700

Before JENNIFER D. BAHR, LINDA E. HORNER, and
BRANDON J. WARNER, *Administrative Patent Judges*.

WARNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Haewon Jeong et al. (“Appellants”)¹ appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 9–12, 14, 15, and 17, which are all the pending claims. *See* Br. 5. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is AmorePacific Corporation. Br. 3.

CLAIMED SUBJECT MATTER

Appellants' disclosed invention "relates to a mascara brush for eyelash makeup." Spec. ¶ 2.² Claim 9, reproduced below, is the sole independent claim and is representative of the subject matter on appeal.

9. A mascara brush comprising:

a generally-cylindrical core defining an axis, a circumferential surface surrounding the core, said circumferential surface being defined by opposite first and second half-circumferential surfaces;

a plurality of coaxial plate comb teeth projecting from the first half-circumferential surface in a continuous repeating pattern; and

a plurality of coaxial hairs projecting from the second half-circumferential surface in an arc extending approximately 180 degrees.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Gueret	US 6,681,777 B2	Jan. 27, 2004
Rebours	US 7,856,994 B2	Dec. 28, 2010
Kim ("Kim '739")	KR 20-0378739	Mar. 18, 2005
Kim ("Kim '525")	KR 20-0416525	Feb. 16, 2006
Lee	KR 20-0433657	Dec. 12, 2006

² References made herein to Appellants' Specification refer to the version of the Specification dated March 12, 2012, which includes paragraph numbering.

REJECTIONS

The following rejections are before us for review:

- I. Claims 9, 11, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee and Gueret.
- II. Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee, Gueret, and Kim '739.
- III. Claims 12 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee, Gueret, and Kim '525.
- IV. Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee, Gueret, and Rebours.

ANALYSIS

Rejection I— Claims 9, 11, and 17 as unpatentable over Lee and Gueret

Appellants present arguments against Rejection I of independent claim 9, and do not assert any separate arguments for patentability of claims 11 and 17 also subject to Rejection I. *See* Br. 14–22. We select claim 9 as representative of the issues that Appellants present in the appeal of this rejection, with claims 11 and 17 standing or falling therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner found that Lee discloses a mascara brush, substantially as claimed, including “disc-type plates (40) formed on one side and repeated along the length of the brush core (41) with hairs, or bristles, (34) formed on an opposite side of the plate comb tooth region and also extending along the length of the brush core.” Final Act. 3–4 (citing Lee, Figs. 1–2). The Examiner explained that “[e]ach half of the core’s exterior constitutes a circumferential surface surrounding the core.” *Id.* at 4. According to the

Examiner, “Lee discloses two separate applicator cores (32 & 42), [and] these cores are joined together (41) to form a single core (32 & 42) for the brush (see Figs 1-3).” *Id.*

Appellants argue that Lee fails to disclose or suggest “a plurality of coaxial plate comb teeth projecting from the first half-circumferential surface in a continuous repeating pattern,” and “a plurality of coaxial hairs projecting from the second half-circumferential surface in an arc extending approximately 180 degrees,” as recited in claim 9. *See* Br. 17, 19–20. In particular, Appellants assert that “no plurality of coaxial plate comb teeth project from opposite half-circumferential surfaces of the alleged brush core 41” of Lee. *Id.* at 19. According to Appellants, Lee teaches that “a second cylindrical portion 40 attaches to the core 20, and extends parallel to the core 20” and “[a] plurality of ridge 43 projects from this second parallel portion 40.” *Id.*

We are not persuaded by Appellants’ argument because it is not responsive to the rejection presented by the Examiner. The Examiner did not rely on element 20 of Lee for teaching a core, but, instead, the Examiner pointed to elements 32 and 42 in combination. *See* Final Act. 4. As the Examiner further explains, “the two half circumferential surfaces . . . together form a ‘generally cylindrical core’” (Ans. 4), and “this single compound core has two circumferential surfaces (since both portions of the core are cylindrical they each comprise at least a half-circumferential surface as claimed) and from each of these respective surfaces, the comb plate disc teeth and bristles each respectively project” (*id.* at 5). In this regard, Appellants do not specifically address or identify error in the Examiner’s position in the rejection as presented. Moreover, to the extent that

Appellants' argument suggests that Lee fails to disclose a core having a single, unitary part from which the teeth and hairs project, we note that the broadest reasonable interpretation of claim 9, read in light of the Specification, does not require a unitary core. We find nothing in the claim or the Specification that would exclude a brush core made up of more than one part. Thus, Appellants' arguments do not apprise us of error in the Examiner's findings regarding the disclosure of Lee, which are supported by a preponderance of the evidence.

Appellants argue that Gueret does not disclose a "plurality of coaxial plate comb teeth or hairs [that] *project* from opposite half-circumferential surfaces of the support 2." Br. 20 (underlining omitted). Appellants assert that "[t]he Examiner does not explain with sufficient specificity how the teeth or hairs can be molded unitarily with the alleged core 11, which is actually the bulge." *Id.* at 21. According to Appellants, "[i]f the Examiner intended the core as the element 31, then the molded one would have to change the principle of the operation." *Id.*

Appellants' arguments regarding the disclosure Gueret are not persuasive of error because they are not responsive to the rejection articulated by the Examiner. As discussed *supra*, the Examiner relied on Lee for disclosing plate comb teeth and hairs projecting from a core, and did not rely on Gueret for disclosing these features.³ *See* Final Act. 3–4.

³ The Examiner relied on Gueret solely for disclosing a mascara brush having a core and hairs that are molded from "elastic" material. *See* Final Act. 4 (stating that "Lee discloses the invention essentially as claimed except for the core and hairs being elastic"). However, as pointed out by Appellants, claim 9 no longer recites the term "elastic." *See* Br. 20 (explaining that Appellants deleted the term "elastic" from the claims in an

Accordingly, for the foregoing reasons, we sustain the rejection of claim 9, and of dependent claims 11 and 17 falling therewith, under 35 U.S.C. § 103(a) as being unpatentable over Lee and Gueret.

Rejections II–IV – Claims 10, 12, 14, and 15 as unpatentable over Lee, Gueret, and one of Kim ’739, Kim ’525, and Rebours

With respect to the rejections of claims 10, 12, 14, and 15, which depend from claim 9, Appellants do not set forth any additional substantive arguments separate from the arguments discussed *supra*. Accordingly, for the same reasons that Appellants’ arguments do not apprise us of error in Rejection I, Appellants also do not apprise us of error in Rejections II, III, or IV. Thus, we likewise sustain the rejections of claims 10, 12, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Lee and Gueret, with one of Kim ’739, Kim ’525, and Rebours.

DECISION

We AFFIRM the Examiner’s decision rejecting claims 9, 11, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Lee and Gueret.

We AFFIRM the Examiner’s decision rejecting claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Lee, Gueret, and Kim ’739.

amendment dated May 3, 2013). As such—because the rejection relied on Gueret solely for disclosing a feature no longer recited in the claims (i.e., elastic core and hairs)—the Examiner’s findings regarding the disclosure of Gueret, and the associated reasoning articulated as to why it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lee’s mascara brush such that the core and hairs are molded from elastic material, appear to be no longer material to the rejection subject to appeal. *See* Final Act. 4–5.

Appeal 2015-001482
Application 12/681,435

We AFFIRM the Examiner's decision rejecting claims 12 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Lee, Gueret, and Kim '525.

We AFFIRM the Examiner's decision rejecting claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Lee, Gueret, and Rebours.

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

AFFIRMED