Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.
This is a decision on the appeal by Patent Owner from the Examiner’s final rejection of claim 1–18 and 20–26 and the cross-appeal by Third Party Requester from the Examiner’s decision not to adopt rejections of claims 1–
26, which includes the rejection of claim 19 whose patentability was confirmed by the Examiner. The Board’s jurisdiction for this appeal is under 35 U.S.C. §§ 6(b), 134, and 315. We affirm the Examiner’s decision.

STATEMENT OF CASE


The claims of the patent are directed to artificial hair comprising a polyester fiber made of (A) polyalkylene terephthalate or of a copolymer comprising polyalkylene terephthalate; and (B) a brominated epoxy flame retardant. According to the ’430 patent, the artificial hair “maintains fiber properties such as flame resistance, heat resistance, and strength and elongation, and has excellent curl-setting properties, transparence, devitrification resistance, and combing properties.” ’430 patent, col. 1, ll. 25–29. Claims 1–26 are under reexamination. Claims 1–24 are original claims. Claims 25 and 26 were added during the reexamination proceeding.


An oral hearing was held on September 30, 2015 with both parties in attendance. A transcript will be entered into the record in due course.
This case is related to Inter Partes Reexamination Control 95/001,652 of US 7,759,429. The decision of the Examiner in the 95/001,652 Reexamination was appealed to the PTAB (Appeal No. 2014-001539). The Board entered new grounds of rejection under 37 C.F.R. § 41.77(b). Patent Owner’s request to reopen prosecution under 37 C.F.R. § 41.77(b)(1) has been remanded to the Examiner for further action.

Requester lists a related pending litigation: Kaneka Corporation v. JBS Hair, Inc., Uno & Company, Ltd. and Jinny Beauty Supply Company Ltd. (N.D. of Texas) Case No. 3:10-cv-1430-P. Requester Appeal Br. 2. The case has been appealed to the Federal Circuit.

CLAIMS

Claim 1 is the only independent claim and reads as follows:

1. (original) A hair product comprising flame retardant polyester fiber and 60% or less of human hair, the fiber comprising 100 parts by weight of (A) a polyester made of one or more of polyalkylene terephthalate or copolymer polyester, which comprises polyalkylene terephthalate as a main component, and 5 to 30 parts by weight of (B) a brominated epoxy flame retardant having a repeating unit represented by

wherein the hair product is selected from a wig, a hair wig and a hair extension.
OWNER’S APPEAL

REJECTIONS

Patent Owner appeals 37 grounds of rejection of claims 1–18 and 20–26, each under 35 U.S.C. § 103. PO Appeal Br. 4–7. We have only considered Grounds 2–8, 16–22, 30, 32, 34,1 and 36. These grounds of rejection are based primarily on Esaki2 and either of Iizaka ’2533 or Iizaka ’849,4 the latter two of which we consider to constitute the best prior art for the teachings relied upon by the Examiner.5 The considered rejections included all the rejected claims, claims 1–18 and 20–26.

Obviousness

The obviousness rejections under consideration are based, inter alia, on the combination of 1) Esaki, which teaches an artificial hair fiber comprising PET (polyethylene terephthalate) and a flame retardant, and 2) Iizaka ’849 and Iizaka ’253, each which are said to teach the specific brominated epoxy flame retardant which is claimed. RAN 5–6, 36–38.

The following declarations were cited as evidence:

• Declaration under 37 C.F.R. § 1.132 by Masahiko Mihoichi (dated Nov. 28, 2011) describing prior art (“First Mihoichi Decl.” or “Declaration A”);

1 Rejections 32 and 34 are identical in the Brief. It is believed that Patent Owner intended one rejection to be of claim 25 and the other rejection of claim 26, but not both of claim 26.
5 Iizaka ’253 and ’849 have similar disclosures. When both are mentioned in this Decision, they are referred to simply as “Iizaka.”
Analogous art

Esaki is cited for its teaching of artificial hair comprising polyester terephthalate filaments as claimed. RAN 5. The Examiner found that Esaki discloses the addition of a halogen flame retardant, but not the claimed “flame retardant polymer comprising brominated bisphenol A type phenoxy resin as a copolymer with polyalkylene terephthalate in the flame retardant copolymer defined in claim 1.” Id. To address this deficiency, the Examiner cited each of Iizaka ’849 and Iizaka ’253, which were said to describe the claimed flame retardant. Id. at 5–6, 31–32, 36–37, 49–50.

Patent Owner contends that neither Iizaka ’849 nor Iizaka ’253 is analogous prior art to the claimed invention. PO Appeal Br. 8.

“To qualify as prior art for an obviousness analysis, a reference must qualify as ‘analogous art,’ i.e., it must satisfy one of the following conditions: (1) the reference must be from the same field of endeavor; or (2) the reference must be reasonably pertinent to the particular problem with which the inventor is involved.” K-TEC, Inc. v. Vita-Mix Corp., 696 F.3d 1364, 1375 (Fed. Cir. 2012).
In this case, each of Iizaka ’849 and Iizaka ’253 were cited by the Examiner for teaching terephthalate polyester comprising the claimed brominated flame retardant. Neither of these cited publications describes artificial hair as do the claims and the Esaki publication, but rather are drawn to the use of the brominated epoxy flame retardant in electronic parts and in molding processes. Iizaka ’253, p. 2; Iizaka ’849, p. 2 (“Terephthalate polyester resins such as polyethylene terephthalate (hereinafter abbreviated as PET) or polybutylene terephthalate (hereinafter abbreviated as PBT) have been widely used for mechanical parts, electrical parts and other fields due to its excellent properties and mold processibility.”) Iizaka ’849 and Iizaka ’253 teach fibers, but these fibers are not described as artificial hair fibers. Iizaka ’849, p. 8; Iizaka ’253, p. 8. For these reasons, Patent Owner contends that the cited publications are not in the same field of endeavor as the claimed invention. PO Appeal Br. 8.

Patent Owner also contends that the publications are not “reasonably pertinent to the particular problem with which the inventor is involved.” Id. Specifically, Patent Owner asserts that the “problem faced by the inventors of the ’430 patent was not making fibers flame retardant, but instead providing artificial hair which maintains fiber properties such as flame resistance, while also having excellent setting properties, devitrification [devitrification] resistance and stickiness reduction.” Id. at 9.

The specific question on appeal is: whether an inventor of artificial hair would have considered the teachings in Iizaka ’849 and Iizaka ’253 of the claimed brominated epoxy flame retardant incorporated into a
terephthalate polyester composition reasonably pertinent to the problem facing the inventor?

We begin by looking at the problem addressed by the ’430 patent. The ’430 patent in its “Background Art” discussion describes the problem of making polyester fibers flame resistant. ’430 patent, col. 1, ll. 61–64. The patent describes problems when a phosphorus flame retardant was used. Id. at col. 2, ll. 27–32. The ’430 patent also describes prior art which teaches “adding a halogenated cycloalkane compound as fine particles to a polyester fiber” and “adding a bromine-containing alkylcyclohexane to a polyester fiber,” which required high heat that caused “problems such as deteriorated fiber properties, reduced productivity, and an increased production cost.” Id. at col. 2, ll. 33–46. Based on these deficiencies in the prior art, the inventors stated:

As described above, artificial hair has not yet been provided which maintains fiber properties possessed by a conventional polyester fiber such as flame resistance, heat resistance, and strength and elongation and has excellent setting properties, devitrification resistance, and stickiness reduction. Id. at col. 2, ll. 47–52.

Thus, it is evident from the background of the ’430 patent that making artificial hair fibers flame resistant was one of the problems addressed by the inventors. At the same time, the inventors also faced the problem of producing flame resistant artificial hair which possesses the characteristics that would make a desirable hair product.

The primary reference cited by the Examiner, Esaki, describes artificial hair with human-like hair properties. Esaki’s hair has the same polyester terephthalate component as claimed and Esaki suggested using a
halogen compound as a flame retardant. RAN 5. Specifically, Esaki teaches that a “flame retardant such as phosphoric or halogen compound” can be added to a hair filament used for a wig. Esaki 5. Esaki, thus, gave the skilled worker express reason to identify a suitable halogen compound as a flame retardant for artificial hair. Esaki describes a polyester as “most suitable” for artificial hair, and “terephthalic acid” is specifically identified as one such polymer (id. at 4), which is the same polymer component which is claimed. Both Iizaka publications also teach terephthalate polyester resins. Iizaka ’253, p. 2; Iizaka ’849, p. 2. Thus, more specifically, the question is whether an inventor of artificial hair would have considered prior art describing polymers made of the same polyester terephthalate as disclosed in Esaki and claimed, and having a halogen flame retardant as disclosed in Esaki, “reasonably pertinent to the particular problem with which the inventor is involved.” K-TEC, 696 F. 3d 1364.

"[A] reference is reasonably pertinent if… it is one which because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” In re Clay, 966 F.2d 656, 659 (Fed. Cir. 1992). However, not “all systems and methods within the common knowledge [can be transformed] into analogous prior art simply by stating that anyone would have known of such a system or method.” Circuit Check Inc. v. QXQ Inc., 795 F.3d 1331, 1335 (Fed. Cir. 2015). The court in Circuit Check stated: “The question is not whether simple concepts such as rock carvings, engraved signage, or Prussian Blue dye are within the knowledge of lay people or even within the knowledge of a person of
ordinary skill in the art. Rather, the question is whether an inventor would look to this particular art to solve the particular problem at hand.” Id.

In this case, we have to consider who is an inventor of artificial hair. As part of this inquiry, we look to a person of ordinary skill in the field of artificial hair because such person would reasonably be an inventor of artificial hair.

Because Patent Owner provided testimony on artificial hair by Mr. Masahiko Mihoichi, we have considered him to be a person ordinary skill in the field of artificial hair. Mr. Mihoichi stated he has been “working in the fiber technology field for 21 years and . . . in the artificial hair technology for 5 years.” Second Mihoichi Decl. 2. Thus, Mr. Mihoichi, who has the perspective of an inventor of artificial hair, has experience in technology broader than just artificial hair fibers, but in fiber technology generally. As a consequence, it is reasonable that publications in the field of fiber technology, including the Iizaka publications, would have been considered pertinent to making an artificial hair because they disclose compositions useful for making fibers.

As found by the Examiner, both cited Iizaka publications teach that their compositions comprise a terephthalate polyester resin and a brominated epoxy flame retardant as claimed (e.g., Iizaka ’849, p. 1) and can be used in fibers (id. at 8). Iizaka ’849 teaches:

The composition of the present invention thus obtained has not only an excellent flame retardant characteristics but also, various good performances such as mechanical characteristic and heat characteristic; the flame retardant agent does not breed [bleed?] from the mold product surface, hence the industrial value is quite large, and they can be used for molds for
mechanical mechanism parts, electric and electronic parts, car parts, building parts and the like, but also can be used for fibers, films and adhesive agents.

Iizaka ’849, p. 8 (emphasis added). Iizaka ’253 also has the same disclosure at p. 8.

Making artificial hair flame resistant was one of the problems addressed by the inventors of the ’430 patent (see above at p. 7). Iizaka ’849 teaches that its fiber has “excellent flame retardant characteristics” (id.), making it pertinent to the inventor’s problem for this reason. Because each of Iizaka ’849 and Iizaka ’253 disclose that their compositions can be used for fibers, an inventor of artificial hair would have reasonably found their disclosures pertinent to the problem of choosing a flame retardant for artificial hair fibers in view of the fact that the person of ordinary skill who worked in artificial hair development would have had experience in fiber technology.

In sum, this is not a case where Iizaka ’253 and Iizaka ’849 have been transformed into analogous art simply by being available to an inventor of artificial hair (see Circuit Check supra), but rather the disclosures of Iizaka ’253 and Iizaka ’849 are reasonably pertinent because 1) they involve fiber technology, the same technology of the claimed invention, 2) they disclose the same polyester component terephthalate as in the claims and Esaki, and 3) they address the problem of making polyester terephthalate resistant to flames.

Mr. Mihoichi attempted to rebut this conclusion. Mr. Mihoichi testified that the skilled worker would not have used the Iizaka ’849 composition in artificial hair because a high amount of flame retardant
would be needed for artificial hair and large amounts of additives produces fibers that tend to break easily. First Mihoichi Decl. 3. Mr. Mihoichi makes the same argument for Iizaka ’253. *Id.* at 4.

Dr. Ellison responded (brackets in the original):

I also noted that Iizaka ’253 states that the mechanical property of the polyester resin is not drastically diminished when using a polymeric flame retardant. [Iizaka ’253 at p. 3, third full paragraph of the English translation.] Iizaka ’849 states there is no great reduction of mechanical properties of the resin. [Iizaka ’849 at p. 3, third full paragraph of the English translation.]

Thus Iizaka ’849 and Iizaka ’253 both address the very concerns raised by Mr. Mihoichi and rather disclose the opposite of Mr. Mihoichi’s assertions.

First Ellison Decl. 8e (p. 5).

The disclosure from Iizaka referred to by Dr. Ellison is reproduced below:

Nevertheless, given the existence of the various disadvantages as mentioned above, the inventors of the present invention have devoted themselves to research in order to obtain a flame-retardant composition without these disadvantages, and as a result they have accomplished the present invention, having discovered a polymer-type flame-retardant agent that makes it possible to make said polyester resin flame retardant without drastically diminishing the superior intrinsic properties of said resin (such as mechanical property, thermal property, molding processability, etc.) without causing the bleed thereof, nor a risk of causing gelatification, but can provide superior resistance to thermal coloration.

Iizaka ’253, p. 3 (emphasis added). Dr. Ellison’s testimony in his declaration about mechanical strength is thus factually supported by evidence of record and sufficiently rebuts Mr. Mihoichi’s statements.
Moreover, Ezaki suggests successful use of halogen flame retardants for use in artificial hair contrary to Dr. Michoichi’s statements.

Patent Owner focuses on the bleeding problem associated with flame retardants in a molding process, asserting the problem solved by Iizaka ’859 and ’253 is bleeding during the molding process and would not have been pertinent to the claimed invention which addresses a different problem. PO Appeal Br. 10, 15; First Mihoichi Decl. 4. However, the issue is not what problem Iizaka ’859 and Iizaka ’253 sought to address, but whether their teachings would have been considered pertinent to the problem addressed by the inventors. The fact that Iizaka describes a solution to the bleeding problem in a molding process (Appeal Br. 10) does not detract from its disclosure elsewhere that the compositions are flame retardant, possess mechanical strength, and can be used in fibers (Iizaka ’859, p. 8), making the Iizaka publications prior art that an inventor of artificial hair would have consulted.

Patent Owner asserts that the “mere mention of the possible use of fibers would not make Iizaka [...] reasonably pertinent because the subject matter in which Iizaka [...] deals (bleeding of flame retardant from the mold surface) would not have logically commended itself to an inventor’s attention in considering the invention as a whole (a hair product).” Reply Br. 4. This argument is not persuasive. Patent Owner has not explained why the much broader disclosure in Iizaka ’253 and ’849 about the compositions being useful to make fibers would be ignored simply because the compositions also avoid bleeding of the flame retardant in a molding process.
A preponderance of the evidence supports the conclusion that each of Iizaka ’849 and Iizaka ’253 are pertinent to the problem of producing an artificial hair with “flame resistance, heat resistance, and strength and elongation and has excellent setting properties, devitrification resistance, and stickiness reduction” as stated in the ’430 patent. ’430 patent, col. 2, ll. 47–52 (emphasis added). Iizaka ’253 and Iizaka ’849 produced a composition with flame resistance and “mechanical property” and “thermal property” (Iizaka ’253, p. 3), three of the problems addressed by the ’430 patent. Patent Owner’s narrow framing of the problem to focus on “setting properties, devitrification resistance, and stickiness reduction” ignores the other recited problems addressed by the inventors, namely flame resistance, heat resistance, and strength, which are all addressed by the Iizaka publications.

To reiterate, as found by the Examiner, an inventor of an artificial hair would have looked to Iizaka ’253 and Iizaka ’849 because they disclose flame retardant fibers and the production of flame resistant fibers was one of the problems that the inventors of the ’430 patent were concerned with.

The inventors in the ’430 patent stated:

In recent years, there has been proposed artificial hair using, as a main component, a polyester typified by polyethylene terephthalate having excellent heat resistance. However, fibers made of a polyester typified by polyethylene terephthalate are flammable materials, and thus have insufficient flame resistance.

’430 patent, col. 1, ll. 59–64.

The second line in the “Detailed Description of the Invention” of Iizaka ’253 expressly states: “The purpose of the present invention is to
provide a resin composition that has superior flame-retardant properties, thermal resistance hydrolysis resistance and mechanical strength as well as stable melt viscosity, and with which there is no ‘bleed’ of the flame-retardant agent to the surface of the molded component obtained {therefrom}.” Iizaka ’253, p. 2.

Consequently, it is logical that an inventor of artificial hair would have looked to the Iizaka publications for a flame retardant composition.

Combination of Esaki and Iizaka ’253 based on making a safer product

Patent Owner also argues that the skilled worker would not have combined Esaki with Iizaka ’253 because there is “nothing” in the references to support the Examiner’s rationale that the composition of Iizaka ’253 would have been employed “in order to produce a safer product that is less likely to catch fire.” Appeal Br. 24. Furthermore, Patent Owner states “Iizaka ’253 does not suggest that the flame-retardant in its composition is safer over other flame-retardants.” Id.

Patent Owner seems to have misconstrued the Examiner’s rationale. The Examiner’s statement about making hair “safer” was with respect to artificial hair which lacked a flame retardant. RAN 39. It is not necessary that the specific flame retardant or flame resistant composition be safer than any other. Any halogen flame retardant or halogen flame resistant composition would have been obvious to one of ordinary skill in the art based on Esaki’s explicit suggestion to use one.

The Examiner also gave a fact-based reason to have turned to Iizaka’s disclosure: “the flame retardant material disclosed by Iizaka [ ] would have
commended itself to the artisan because it is a fiber that is both flame retardant and yet contains predominantly alkylene terephthalate repeating units as taught by Esaki.” *Id.* at 13. Patent Owner’s argument with respect to Esaki’s use of a fire retardant being “safer” does not identify a defect in the Examiner’s findings or reasoning.

Unexpected results

A second declaration of Mr. Mihoichi was provided by Patent Owner to establish the claimed invention was unobvious because it provides results which would have been unexpected by one of ordinary skill in the art. PO Appeal Br. 18. A showing of “unexpected results” can be used to demonstrate the non-obviousness of the claimed invention. *In re Soni*, 54 F.3d 746, 750 (Fed. Cir. 1995) (“One way for a patent applicant to rebut a *prima facie* case of obviousness is to make a showing of ‘unexpected results,’ *i.e.*, to show that the claimed invention exhibits some superior property or advantage that a person of ordinary skill in the relevant art would have found surprising or unexpected.”). Those results must be “surprising or unexpected” to one of ordinary skill in the art when considered in the context of the closest prior art. *Soni*, 54 F.3d at 750; *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1322 (Fed. Cir. 2004) (A showing of “new and unexpected results” must be “relative to prior art.”); *In re Baxter Travenol Labs.*, 952 F.2d 388, 392 (Fed. Cir. 1991) (“[W]hen unexpected results are used as evidence of nonobviousness, the results must be shown to be unexpected compared with the closest prior art”). Unexpected results must also be “commensurate in scope with the degree of
protection sought by the claimed subject matter.” In re Harris, 409 F.3d 1339, 1344 (Fed. Cir. 2005).

The Examiner considered the second Mihoichi declaration but was not persuaded it established unexpected results for the full scope of the claim. The Examiner identified several deficiencies in the evidence. We focus on two of them: 1) results are not commensurate with the scope of the claim (Action Closing Prosecution 64–65; RAN 57–58); and 2) the declaration does not provide any measure of the improved appearance and texture of artificial hair or describe how the measurements were performed. ACP 63–64; RAN 56–57.

With respect to 1), as noted by the Examiner, Mr. Mihoichi only performed a limited number of examples (two discussed by the Examiner), and did not explain how the results of these examples, nor the examples in the ’430 patent, can be extended to establish the nonobviousness of the full scope of the claim, where the claim covers different fiber sizes, degrees of polymerization, and parts per weight of the components. See, e.g., Harris, 409 F.3d at 1344 (“Even assuming that the results were unexpected, Harris needed to show results covering the scope of the claimed range. Alternatively Harris needed to narrow the claims.”); In re Greenfield, 571 F.2d 1185, 1189 (CCPA 1978) (“Establishing that one (or a small number of) species gives unexpected results is inadequate proof, for ‘it is the view of this court that objective evidence of non-obviousness must be commensurate in scope with the claims which the evidence is offered to support.’”)

(Quoting In re Tiffin, 448 F.2d 791, 792 (CCPA 1971)); (Finding the claim scope broad, and the “probative value of appellants’ evidence . . . quite
narrow,” the court in *In re Clemens*, 622 F.2d 1029, 1036 (CCPA 1980) concluded this “is not a case in which the probative value of a narrow range of data can be reasonably extended to prove the unobviousness of a broader claimed range.” *Cf. In re Kollman*, 595 F.2d 48, 56 (CCPA 1979) (where it was held that the nonobviousness of a broader claimed range was proven by a narrower range of data, when one having ordinary skill in the art could “ascertain a trend in the exemplified data which would allow him to reasonably extend the probative value thereof.”).

With respect to 2), Mr. Mihoichi did not explain how gloss, color, and texture were evaluated. Patent Owner acknowledges that “scientific measurements of the samples were not provided for the physical samples,” but contends that “the differences are readily apparent to an ordinary observer both by visual inspection and by feel.” Reply Br. 10.

We do not find this argument persuasive. As observed by the Examiner, the ’430 patent describes specific methods and criteria for measuring the characteristics of hair. ’430 patent, col. 16, l. 39 to col. 18, l. 37. Mr. Mihoichi did not reveal if one of these methods was followed or if it was done purely by his own subjective visual inspection, as Patent Owner contends in the brief. Likewise, if it was done by subjective visual inspection, Patent Owner did not explain why this method was used, rather than the apparently more objective analysis described in the ’430 patent. As a consequence, the reliability and reproducibility of the data in Mr. Mihoichi’s second declaration cannot be determined.

In addition to this, we cannot ignore the decision in the related case, Reexamination Control 95/001,652, an *inter partes* reexamination of US
Patent 7,759,429 B2, in which we found in the Decision on Rehearing that certain comparative artificial hairs were as a good as the artificial hairs made from the claimed components. See Decision on Request for Rehearing in Appeal No. 2014-001539.

**SUMMARY**

After considering the totality of the evidence, we conclude that a preponderance of the evidence supports the Examiner’s determination that claims 1–18 and 20–26 are obvious as set forth in Grounds of Rejection Grounds 2–8, 16–22, 30, 32, 34, and 36. See PO Appeal Br. 4–7. The Examiner is affirmed. In affirming each of the rejected claims on appeal on these grounds, we decline to address the merits of additional grounds of rejection appealed by the Patent Owner. See Beloit Corp. v. Valmet Oy, 742 F.2d 1421, 1423 (Fed. Cir. 1984) (having decided a single dispositive issue, the ITC was not required to review other matters decided by the presiding officer).

**REQUESTER’S CROSS-APPEAL**

The only claim we will consider in the cross-appeal is claim 19, because all the other cross-appealed claims remain rejected on other grounds, as discussed above.

Claim 19 is a dependent claim which indirectly depends from claim 1. Claim 19 recites the “hair product according to claim 18, wherein the

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6 The ’430 patent is a continuation-in-part of the application upon which US Patent 7,759,429 is based.
component (E) is attached to the fiber at a weight ratio of 0.01% to 1%.”

Component (E) is “at least one member selected from the group consisting of an ethylene oxide-propylene oxide random copolymer polyether with molecular weight MW: 15,000 to 50,000, polyethylene oxide with molecular weight MW: 100 to 1,000, and polypropylene oxide with molecular weight MW: 100 to 1,000.”

Requester proposed that claim 19 is obvious under 35 U.S.C. § 103 in view Iizaka ’849, Esaki, Koishi,7 and Slade.8 Requestor Appeal Br. 9–10. It was not disputed that Slade teaches component (E).

Requester states that “[w]hile Slade does not explicitly disclose the lubricant [component (E)] attached to the hair at weight ratio of 0.01 % to 1 % as in claim 19 . . . , finding such weight ratio is a routine optimization to one of ordinary skill in the art when presented with the concept of using lubricants attached to polyester fibers.” Id. at 10.

The Examiner did not adopt the rejection. The Examiner stated:

There is no logical connection between the amount of hydrophilic agent used as a lubricant during the spinning of the fiber versus the amount required to provide artificial hair with necessary smooth feeling, combing properties, and antistatic properties (Kowaki ’430 at column 213, line 60 to column 14, line 10).

RAN 64.

Requester argues that the Examiner erred in not adopting the rejection. Requester states:

However, the first paragraph of Slade states, “Perhaps the most important reason for applying a finish to synthetic fibers is to control the tension during the spinning process, and also the friction in subsequent processing.” Slade at 71 (emphasis added). The fact that the hydrophilic agent also controls friction is related to the smooth feeling and combing properties as excess friction would lead to less smooth feeling and lesser combing properties.

Requester Appeal Br. 10–11.

While the addition of a lubricant to artificial hair during the spinning process might have been obvious to one of ordinary skill in the art, Slade provides no direction as to how much would be added to a fiber to create an artificial hair product. Requester asserted that the amount of lubricant would correlate with the smooth feeling and combing properties of the hair, but did not provide evidence to establish this fact. Nor did the Examiner or Requester produce evidence as to how much lubricant would be adding for spinning purposes to determine if this amount necessarily fell within the concentration range recited in claim 19.

For the above reasons, we affirm the Examiner’s determination that claim 19 is patentable.

**TIME PERIOD FOR RESPONSE**

In accordance with 37 C.F.R. § 41.79(a)(1), the “[p]arties to the appeal may file a request for rehearing of the decision within one month of the date of: . . . [t]he original decision of the Board under § 41.77(a).” A request for rehearing must be in compliance with 37 C.F.R. § 41.79(b).
Comments in opposition to the request and additional requests for rehearing must be in accordance with 37 C.F.R. § 41.79(c), (d), respectively. Under 37 C.F.R. § 41.79(e), the times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (d) of this section, and for submitting comments under paragraph (c) of this section may not be extended.

An appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. §§ 141–144 and 315 and 37 C.F.R. § 1.983 for an *inter partes* reexamination proceeding “commenced” on or after November 2, 2002 may not be taken “until all parties’ rights to request rehearing have been exhausted, at which time the decision of the Board is final and appealable by any party to the appeal to the Board.” 37 C.F.R. § 41.81. See also MPEP § 2682 (8th ed., Rev. 7, July 2008).

In the event neither party files a request for rehearing within the time provided in 37 C.F.R. § 41.79, and this decision becomes final and appealable under 37 C.F.R. § 41.81, a party seeking judicial review must timely serve notice on the Director of the United States Patent and Trademark Office. See 37 C.F.R. §§ 90.1 and 1.983.

**AFFIRMED**
Appeal 2015-003841
Reexamination Control No. 95/001,653
US 7,759,430 B2

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