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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN SPANHOVE
and GREGORY EDWARD FERNANDES

Appeal 2019-005469
Application 14/574,429
Technology Center 1700

Before KAREN M. HASTINGS, MICHAEL P. COLAIANNI, and
DEBRA L. DENNETT, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ requests our review under 35 U.S.C. § 134(a) of the Examiner's Non-Final Rejection under 35 U.S.C. § 103(a) of claims 1, 3, 4, 7, and 8.

We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word "Appellant" to refer to the "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies Milliken & Company as the real party in interest (Appeal Br. 2).

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the subject matter on appeal (emphasis added to highlight key disputed limitations):

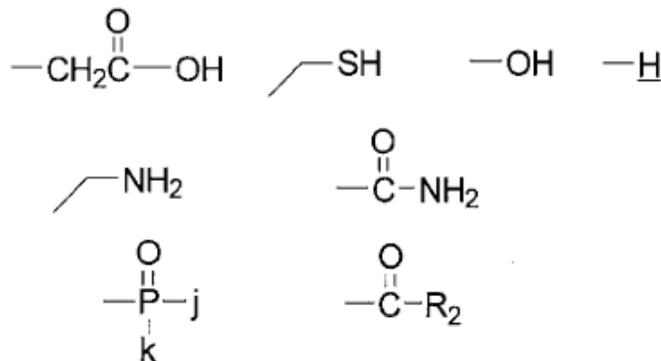
1. A colored speckle comprising:

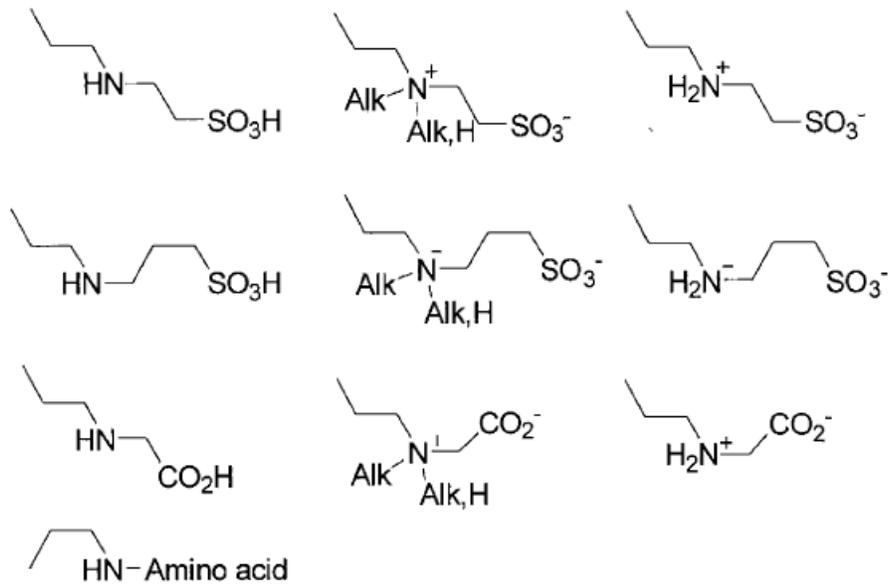
a) a majority by weight of *at least one compacted carrier material selected from the group consisting of sodium carbonate, sodium sulfate, sodium tripolyphosphate, sodium chloride, sodium citrate, sodium silicate, sodium stearate, sodium alkylbenzene sulfonate, sodium lauryl sulfate; and*

b) *at least one polymeric colorant*, wherein the at least one polymeric colorant is characterized as follows:



wherein R is an organic chromophore group, A is a linking moiety in said organic chromophore group selected from the group consisting of N, O, SO₂ or CO₂, the alkylene moiety of the alkyleneoxy constituent contains from 2 to about 4 carbon atoms, n is an integer of from 2 to about 230, m is 1 when A is O, SO₂, CO₂ and 1 or 2 when A is N, x is an integer of from 1 to 5, and the product of n times x times m (n·m·x) is from 2 to about 230, and R₁ is selected from the group consisting of





and sulfonates and sulfates of any of the foregoing members of said group, wherein R_2 is H, an alkyl radical containing up to about 20 carbon atoms or carboxy-terminated alkyl radical containing up to about 20 carbon atoms, j and k are OH, OM or OR_3 wherein M is a cation moiety of an alkali metal, an alkaline earth metal, transition metal, or ammonium, R_3 is an alkyl radical containing up to about 20 carbon atoms, and wherein “Alk” is an alkyl radical containing up to about 20 carbon atoms;

wherein the at least one polymeric colorant is in contact with the compacted carrier material and forms a carrier-polymeric colorant composite, and

wherein the carrier-polymeric colorant composite comprises a cross-sectional volume that is uniformly colored by the at least one polymeric colorant.

Appeal Br. 11–13 (Claims Appendix).

REJECTIONS

Claims 1, 3, 4, 7, and 8 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cardozo et al. (US 2006/0019860 A1, published Jan. 26, 2006) (hereinafter “Cardozo”) in view of Hong et al. (US 2010/0125957 A1, published May 27, 2010) (hereinafter “Hong”) or Bruhnke (US 5,766,268, issued June 16, 1998).

Claims 1, 3, 4, 7, and 8 are rejected under 35 U.S.C. § 103(a) as unpatentable over Manske et al. (US 2003/0036497 A1, published Feb. 20, 2003) (hereinafter “Manske”) in view of Hong or Bruhnke.

Appellant’s arguments are directed solely to whether the applied prior art describes or suggests the italicized limitations, which appear in claim 1, *supra* (Appeal Br. 11–13 (Claims Appendix); *generally* Appeal Br.).

Accordingly, we decide each ground of rejection under 35 U.S.C. § 103(a) on the basis of the arguments made in support of patentability of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

OPINION

Upon consideration of the evidence of record and each of Appellant’s contentions as set forth in the Appeal Brief, we determine that Appellant has not demonstrated reversible error in the Examiner’s rejections (e.g., *see generally* Ans.). *In re Jung*, 637 F.3d 1356, 1365–66 (Fed. Cir. 2011) (explaining the Board’s long-held practice of requiring Appellant(s) to identify the alleged error in the Examiner’s rejection). We sustain the rejection for the reasons expressed by the Examiner in the Non-Final Office Action and the Answer.

We add the following primarily for emphasis.

The Examiner’s rejections rely on Cardozo’s detergent compositions comprising colorants in Ground 1 or Manske’s colored or speckled detergents in Ground 2 (Non-Final Act. 3–4; 7–8). The Examiner finds that each alternative primary references’ colored detergent discloses or suggests each feature of the colored speckle subject matter except for: (i) the “at least one polymeric colorant” and (ii) a “uniformly colored” bead, as recited in claim 1 (*id.* at 4, 8). The Examiner, however, relies upon Hong’s or Bruhnke’s polymeric colorants for teaching the limitations missing from Cardozo in Ground 1 and Manske in Ground 2 (*id.* at 4–7; 8–9).

Appellant’s main contentions are that (1) Cardozo’s extrusion process for making colored particles and detergents would not have prepared the claimed “compacted carrier material” (Appeal Br. 5–6), (2) the Specification’s examples demonstrate that colored speckles comprising *compacted* carrier material are advantageous over colored speckles comprising *non-compacted* carrier material (*id.* at 7), (3) Hong describes use of *solid* polymeric colorants in laundry detergent, thus teaching away from Manske’s detergent comprising *liquid* coloration components (*id.* at 9), and (4) one of ordinary skill in the art would not have specifically combined Bruhnke’s liquid polymeric colorants with Manske’s detergent particles (*id.* at 9–10).

Appellant’s arguments are not persuasive of reversible error for reasons detailed by the Examiner (Ans. 9–13).

It is well established that “the PTO must give claims their broadest reasonable construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.” *In re ICON Health & Fitness, Inc.*,

496 F.3d 1374, 1379 (Fed. Cir. 2007) (“[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.”)

Here, Appellant’s Specification lacks any limiting definition for “compacted carrier material.” The Specification describes that soda ash, a preferred carrier material, is “compacted via a *wet* or a dry granulation process” (Spec. 7:8–9 (emphasis added)). While Appellant contends that the extrusion process of Cardozo and Exhibit A, “Plastic Extrusion Process” available at <https://www.polymeracademy.com/plastic-extrusion-process/>, is distinguished from the roller compaction methods described in the Specification (Appeal Br. 6–7), nothing in the claim language requires roller compaction. *See also Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc) (“[A]lthough the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments.”).

As the Examiner finds, Exhibit A “discloses a ‘melting zone’ as one of the three zones in most screws which is also called ‘the transition or compression zone,’” i.e., a compaction zone (Ans. 10). Thus, Appellant has not identified reversible error in the Examiner’s finding that Cardozo’s colored particles comprise “compacted carrier material,” within the meaning of claim 1.

To the extent that Appellant argues that Cardozo’s extruded colored particles would not have exhibited a cross-sectional volume that is uniformly colored (Appeal Br. 7), it is well established that when claimed and prior art products are produced by identical or substantially identical processes, the

PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977). On this record, Appellant has not demonstrated that Cardozo's extruded colored particles do not exhibit the disputed property.

Rather, Appellant has only tested a single *compacted* carrier material from the claimed Markush group in an attempt to demonstrate advantages over colored speckles comprising *non-compacted* carrier material (*see* Ans. 11). In other words, Appellant has not provided a comparison of the claimed invention that is commensurate in scope with claim 1.

Appellant, moreover, has not sufficiently explained why the result of coloring would not have been rendered obvious by the combination of Cardozo with either Hong or Bruhnke (e.g., Appeal Br. 7). It has long been established that differences in ornamentation are entitled to little weight in determining the obviousness of a claim to a structure. *Cf. In re Seid*, 161 F.2d 229, 231 (CCPA 1947). Any significant differences in improved color bleed resistance in granular or powder detergent formulations argued by Appellant (e.g., Appeal Br. 7 (citing Spec. Tables 1A and 1B)) are *de minimis* over the applied prior art, especially as Appellant's Specification stresses that the claimed subject matter is directed to satisfying a "need for colored speckles that provide aesthetic appeal to detergent compositions" (e.g., Spec. 2:5).

Appellant's argument that Hong's *solid* polymeric colorants in laundry detergent teaches away from Manske's detergent comprising *liquid* coloration components (e.g., Appeal Br. 9) is not persuasive as it fails to

identify any teaching in Manske that criticizes, discredits, or discourages solid colorants. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

Appellant, furthermore, has not shown reversible error in the Examiner's position that it would have been obvious for one of ordinary skill to have incorporated either Hong's or Bruhnke's polymeric colorant, having a chromophore group like nitroso, nitro, or azo groups, as a coloring dye because Manske specifically desires coloration or speckling of the adjunct particles (e.g., Ans. 13). As the Examiner finds, one of ordinary skill in the art would have recognized that Hong or Bruhnke provides such dye colorants, which exhibit excellent solubility in water, are easy to handle, and provide reduced staining to skin and textiles (e.g., *id.*). *See also KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (the predictable use of known prior art elements or steps performing the same functions they have been known to perform is normally obvious; the combination of familiar elements/steps is likely to be obvious when it does no more than yield predictable results); *Ball Aerosol & Specialty Container, Inc. v. Ltd. Brands, Inc.*, 555 F.3d 984, 993 (Fed. Cir. 2009) (under the flexible inquiry set forth by the Supreme Court, the PTO must take account of the "inferences and creative steps," as well as routine steps, that an ordinary artisan would employ) (emphasis omitted).

Accordingly, we sustain the Examiner's rejections claims 1, 3, 4, 7, and 8.

CONCLUSION

The decision of the Examiner is affirmed.

In summary:

Claims Rejected	35 U.S.C. §	References/ Basis	Affirmed	Reversed
1, 3, 4, 7, 8	103(a)	Cardozo, Hong, Bruhnke	1, 3, 4, 7, 8	
1, 3, 4, 7, 8	103(a)	Manske, Hong, Bruhnke	1, 3, 4, 7, 8	
Overall Outcome			1, 3, 4, 7, 8	

TIME PERIOD FOR RESPONSE

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)(iv).

AFFIRMED