UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/401,508	01/09/2017	Richard Timothy HARTSHORN	14648	1397

27752 7590 09/23/2020

THE PROCTER & GAMBLE COMPANY
GLOBAL IP SERVICES
CENTRAL BUILDING, C9
ONE PROCTER AND GAMBLE PLAZA
CINCINNATI, OH 45202

EXAMINER
THOMAS, JAISON P

ART UNIT	PAPER NUMBER
1761	

NOTIFICATION DATE	DELIVERY MODE
09/23/2020	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

centraldocket.im@pg.com
mayer.jk@pg.com
pair_pg@firsttofile.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD TIMOTHY HARTSHORN

Appeal 2019-006584
Application 15/401,508
Technology Center 1700

Before BEVERLY A. FRANKLIN, JEFFREY R. SNAY, and MICHAEL G. MCMANUS, *Administrative Patent Judges*.

SNAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision rejecting claims 1–18. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies The Proctor & Gamble Company as the real party in interest. Appeal Br. 1.

BACKGROUND

The invention relates to laundry scent particles. Spec. 1. Claim 1 is the sole independent claim on appeal and reads as follows:

> 1. A packaged composition comprising a plurality of particles, wherein said particles comprise:
> polyethylene glycol;
> perfume; and
> a material selected from the group consisting of:
> a polyalkylene polymer of formula H-$(C_2H_4O)_x$-$(CH(CH_3)CH_2O)_y$-$(C_2H_4O)_z$-OH wherein x is from about 50 to about 300, y is from about 20 to about 100, and z is from about 10 to about 200;
> a polyethylene glycol fatty acid ester of formula $(C_2H_4O)_q$-C(O)O-$(CH_2)_r$-CH_3 wherein q is from about 20 to about 200 and r is from about 10 to about 30;
> a polyethylene glycol fatty alcohol ether of formula HO-($C_2H_4O)_s$-$(CH_2)_t$)-CH_3 wherein s is from about 30 to about 250 and t is from about 10 to about 30;
> and mixtures thereof;
> *wherein each of said particles has a density from about 0.3 g/cm^3 to less than 1 g/cm^3*;
> wherein each of said particles has a mass from about 0.1 mg to about 5 g; and
> wherein each of said particles has a maximum dimension of less than about 10 mm.

Appeal Br. 4 (Claims Appendix) (emphasis added to highlight a disputed recitation).

REJECTIONS[2]

I. Claims 1 and 6–18[3] stand rejected under 35 U.S.C. § 103 as unpatentable over Bautista.[4]

II. Claims 2–5 stand rejected under 35 U.S.C. § 103 as unpatentable over Bautista and Dykstra. [5]

OPINION

With regard to Rejection I, Appellant argues only claim 1, Appeal Br. 2–3, which we select as representative of the rejected group.[6] With regard to Rejection II, Appellant solely relies on arguments presented for claim 1. Reply Br. 3. Claims 2–18 stand or fall with claim 1.

Relevant to Appellant's arguments on appeal, the Examiner finds Bautista discloses particles formulated from components within the recited formulae, but fails to disclose particle density. Final Act. 3, 5. The Examiner finds Bautista teaches particle mass and diameter ranges which encompass values that, for generally spherical particles, would have resulted in a particle density within Appellant's recited range. *Id.* at 3, 6 (citing Bautista ¶ 15). In light of the foregoing disclosures in Bautista, the Examiner finds one of ordinary skill in the art would have had a reason to

[2] *See* Ans. 3–7. The Examiner's rejection of claims 1 and 6–17 under 35 U.S.C. § 102 stands withdrawn. *Id*. at 7.
[3] Claim 19 is canceled. *See* Advisory Action, dated July 3, 2019.
[4] WO 2016/081006 A1, published May 26, 2016 ("Bautista").
[5] US 2016/0369211 A1, published December 22, 2016 ("Dykstra").
[6] Appellant's arguments regarding claim 18 which are raised for the first time in the Reply Brief without showing good cause are waived. *See* 37 C.F.R. § 41.41(b)(2).

select particle mass and diameter values which would have yielded particle density within the range recited in claim 1. *Id.* at 6.

Appellant argues the Examiner "improperly relies on the theory of inherency to find the claimed range of density in [Bautista]." Appeal Br. 2. Appellant contends the Examiner "is in error failing to identify in art, as cited, particles having a density within the range claimed." *Id.* at 2–3.

Appellant's argument is not persuasive of reversible error. The Examiner's rejection on appeal, and in particular the Examiner's finding regarding particle density, is premised on obviousness, not inherency. *See* Final Act. 6 ("[I]t would have been obvious to one of ordinary skill in the art to arrive at the claimed density from the prior art composition."); Ans. 8 ("The Examiner is not suggesting the prior art inherently discloses the density property.").

A preponderance of the evidence presented supports the Examiner's finding. Bautista identifies particles preferably having a mass of about 0.035 g and longest size dimension of from 4–6 mm. Bautista ¶ 15. For spherical particles,[7] those values correspond to a particle density range of about 0.1 to about 1 g/cm^3, which overlaps the recited range.[8] When claimed ranges overlap or lie inside ranges disclosed by the prior art for every component in a claim, a prima facie case of obviousness is established. *See In re Peterson*, 315 F.3d 1325, 1329 (Fed. Cir. 2003); *In re Geisler,* 116 F.3d 1465, 1469-70 (Fed. Cir. 1997). Indeed, the law is replete with cases in which the difference between the claimed invention and the prior art is some range or

[7] Appellant in the Appeal Brief does not challenge the Examiner's reading of Bautista as including spherical particles.
[8] The volume of a sphere of radius r is $(4/3)\pi r^3$, and density is mass/volume.

other variable within the claims. These cases have consistently held that the Appellants must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range. *In re Woodruff*, 919 F.2d 1575, 1578 (Fed. Cir. 1990). Appellant has not made this showing.

For the foregoing reasons, Appellant does not identify reversible error in the Examiner's obviousness rejection of claim 1. Accordingly, we sustain the rejections of claims 1–18 under 35 U.S.C. § 103.

CONCLUSION

The Examiner's decision rejecting claims 1–19 is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 6–18	103	Bautista	1, 6–18	
2–5	103	Bautista, Dykstra	2–5	
Overall outcome			1–18	

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