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NOVOZYMES NORTH AMERICA, INC. US PATENT DEPARTMENT 77 PERRYS CHAPEL CHURCH ROAD PO BOX 576 FRANKLINTON, NC 27525-0576			BOWERS, ERIN M	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte OLE SIMONSEN and VICTOR CASELLA

Appeal 2020-000140
Application 14/774,807
Technology Center 1600

Before ERIC B. GRIMES, FRANCISCO C. PRATS, and
LILAN REN, *Administrative Patent Judges*.

PRATS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 5, 6, 15, and 20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies Novozymes A/S located in Bagsvaerd, Denmark, Monosol LLC, located in Merrillville, Indiana, and Novozymes North America, Inc., located in Franklinton, North Carolina, as the real parties in interest. Appeal Br. 1.

STATEMENT OF THE CASE

The following rejections are before us for review:²

(1) Claims 5, 6, and 15, under 35 U.S.C § 103 as being unpatentable over Labeque³ (Ans. 7–8); and

(2) Claims 5, 6, 15, and 20, under 35 U.S.C. § 103 as being unpatentable over Labeque and Mangin⁴ (Ans. 9–10).

Appellant’s claim 5, the sole independent claim on appeal, is representative and reads as follows:

5. A detergent pouch comprising *a compartment formed by an enzyme containing water-soluble film*, and a detergent containing a builder with a Ca²⁺ logarithmic stability constant of above 4.5.

Appeal Br. 9 (emphasis added to claimed feature at issue).

DISCUSSION

In rejecting claims 5, 6, and 15 over Labeque, the Examiner found that Labeque suggests a detergent pouch having all of the features of the pouch recited in the rejected claims. Ans. 7–8.

As to the recitation in Appellant’s claim 5, that the claimed pouch has “a compartment formed by an enzyme containing water-soluble film” (Appeal Br. 9), the Examiner determined that because Labeque discloses a water-soluble film that encapsulates a liquid detergent that contains

² The Examiner’s Answer included a provisional rejection for obviousness-type double patenting over copending application 14/388,503 (“the ’503 application”). Ans. 3–6. The ’503 application has been abandoned, however. *See* the ’503 application, Notice of Abandonment (entered March 5, 2020).

³ US 2012/0053107 A1 (published Mar. 1, 2012).

⁴ US 2003/0069155 A1 (published Apr. 10, 2003).

enzymes, “the enzyme[s] in the pouch made by the film would be in contact with the film, and so the film can be interpreted as ‘enzyme-containing’ because it is in physical contact with an enzyme.” *Ans.* 7–8; *see also id.* at 12 (asserting that “the term ‘a compartment formed by an enzyme containing . . . film’ can reasonably be interpreted even more broadly as a compartment formed out of a film in which an enzyme solution is stored”).

Appellant contends that, “[c]ontrary to the position of the Office, the claimed element ‘compartment formed by an enzyme containing water-soluble film’ requires that the enzyme be incorporated into the water-soluble film.” *Appeal Br.* 4; *see also id.* at 5–7 (contending that the Specification consistently describes enzymes as being incorporated into water-soluble film).

We find that Appellant has the better position.

We acknowledge that “the distinction between using the specification to interpret the meaning of a claim and importing limitations from the specification into the claim can be a difficult one to apply in practice.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005).

Ultimately, nonetheless, while the PTO is “required to give all claims their broadest reasonable construction, . . . any such construction [must] be consistent with the specification, and th[e] claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Abbott Diabetes Care Inc.*, 696 F.3d 1142, 1149 (Fed. Cir. 2012) (citation omitted). “Indeed, the specification is always highly relevant to the claim construction analysis. Usually it is dispositive; it is the single best guide to the meaning of a disputed term.” *Id.* (internal quotes and citations omitted).

In the present case, we agree with Appellant that the Examiner's interpretation of "a compartment formed by an enzyme containing water-soluble film" (Appeal Br. 9) is not consistent the Specification.

The Specification explains that Appellant's invention addresses "the challenge of formulating detergents, because several incompatibilities between enzymes and detergent ingredients exist." Spec. 1.

To address that challenge, "the invention provides a detergent pouch comprising a compartment formed by an enzyme containing water-soluble film, and an enzyme containing detergent, *wherein the enzyme in the film is different from the enzyme in the detergent*. In an embodiment, the enzyme *in the film* is protease." Spec. 3 (emphasis added).

Thus, in the same sentence that uses the claim language at issue to describe Appellant's invention ("a compartment formed by an enzyme containing water-soluble film"), the Specification distinguishes between an "enzyme *in the film*" and an "enzyme *in the detergent*." Spec. 3 (emphasis added). We are not persuaded, therefore, that the Examiner is consistent with the Specification in interpreting the language at issue in claim 5 as encompassing an enzyme in a detergent, merely because the enzyme in the detergent can come into physical contact with the film.

Indeed, consistent with Appellant's contention that claim 5's recitation of "a compartment formed by an enzyme containing water-soluble film" (Appeal Br. 9) means that an enzyme is incorporated into the film itself, the Specification repeatedly describes Appellant's invention as involving inclusion of an enzyme in the film:

By placing some (or all) of the enzyme *in one or more of the ingoing water-soluble films*, several degrees of freedom for formulating the unit dose can be obtained. One option is to

separate protease enzyme from non-protease enzyme, by having one enzyme in the pouch and the other *in the film*, or by having them *in two separate films*.

Spec. 3 (emphasis added); *see also id.* at 7 (listing different enzymes that may be “comprised *in the enzyme containing water-soluble film* of the invention” (emphasis added); *id.* at 24 (“The detergent composition may comprise one or more (other) enzymes, in addition to the enzymes comprised in the water-soluble films.”).

Given the above disclosures in the Specification, Appellant persuades us that the Examiner’s interpretation of “a compartment formed by an enzyme containing water-soluble film” (Appeal Br. 9 (claim 5)) is not consistent with the Specification. Indeed, given the cited disclosures in the Specification, we agree with Appellant that, when given its broadest reasonable interpretation consistent with the Specification, claim 5 requires an enzyme to be incorporated into the water-soluble film itself.

The Examiner does not dispute that Labeque does not describe or teach a detergent pouch that has a compartment formed by a water-soluble film, in which an enzyme is incorporated into the film. *See Ans. generally.* Nor does the Examiner explain why Labeque would have suggested incorporating an enzyme into a water-soluble film used to form a detergent pouch. *See id.* Because the Examiner does not persuade us, therefore, that Labeque teaches or suggests a detergent pouch having all of the features required by Appellant’s claim 5, we reverse the Examiner’s rejection of claim 5, and its dependent claims 6 and 15, over Labeque.

In rejecting claims 5, 6, 15, and 20 over Labeque and Mangin, the Examiner cited Mangin as evidence that it would have been obvious to include a dishwashing detergent, as recited in claim 20, in Labeque’s

detergent-containing pouches. *See* Ans. 9–10. Accordingly, because Mangin does not remedy the deficiencies discussed above in Labeque as to claims 5, 6, and 15, we also reverse the Examiner’s rejection of claims 5, 6, 15, and 20 over Labeque and Mangin.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
5, 6, 15	103(a)	Labeque		5, 6, 15
5, 6, 15, 20	103(a)	Labeque, Mangin		5, 6, 15, 20
Overall Outcome				5, 6, 15, 20

REVERSED