

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL J. HALLORAN, KENNETH A. KASPRZAK
and PATRICIA D. HERTER

Appeal No. 95-4881
Application 08/254,852¹

ON BRIEF

Before WEIFFENBACH, PAK and WALTZ, Administrative Patent Judges.

WEIFFENBACH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 7-11 which are all of the claims remaining in the application. We reverse.

¹ Application for patent filed June 06, 1994. According to the appellants, the application is a division of Application 07/972,342, filed November 06, 1992.

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Claimed Subject Matter

The claims on appeal are directed to a composition comprising a mixture of an amine functional silicone and a trisiloxane polyether. Claim 7 is illustrative of the claimed subject matter. A copy of the claim is appended to this decision.

References of Record

The following references of record are relied upon by the examiner as evidence of obviousness:

Keil	4,265,878	May 5, 1981
Ansher-Jackson et al. (Ansher-Jackson)	5,100,657	Mar. 31, 1992
Bolich, Jr. et al. (Bolich)	5,104,646	Apr. 14, 1992

The following article was cited by appellants in their reply brief:

D. F. Williams et al. (Williams), *Chemistry and Technology of the Cosmetics and Toiletries Industry*, Blackie Academic & Professional, page 93 (1992).

The Rejection

Claims 7-11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ansher-Jackson or Bolich in view of Keil.

Opinion

We have carefully considered the respective positions advanced by appellants and the examiner. For the reasons given below, we will not sustain the examiner's rejection .

While we agree with the conclusion and reasons by the examiner that the affidavit under 37 CFR

§ 1.131 by all of the named inventors of this application does not remove the Ansher-Jackson and Bolich references as prior art, we do not find that the examiner has established that the claimed subject matter would have been a *prima facie* case of obviousness over Ansher-Jackson or Bolich over Keil.

Claim 7, the only independent claim in the application, recites a composition comprising a mixture of an amine functional silicone and a trisiloxane polyether useful as a hair conditioner. The Ansher-Jackson and Bolich patents disclose a hair conditioner composition comprising, *inter alia*, a hair conditioner consisting of an amine functional silicone within the scope of claim 7 (compare Ansher-Jackson formula (II) to the formula disclosed on page 20 of appellants' specification) and a secondary surfactant consisting of a trisiloxane polyether, i.e., a polyalkylene oxide modified polydimethylsiloxane (compare the claimed trisiloxane polyether to Ansher-Jackson's formula at col. 9, lines 37-45 when $x = 1$ and $y = 1$). The difference between appellants' composition and the prior art is that the trisiloxane polyether disclosed by Ansher-Jackson contains an extra polyalkylene unit between the terminal dimethyl siloxane unit and the methyloxyalkylene siloxane unit.

According to the examiner, "the text of the disclosure [of] both Ansher-Jackson and Bolich refer to other dimethicone copolyols which have utility in their respective inventions and both incorporate by reference other patent literature describing these materials" (answer: paragraph bridging pp. 2-3). The examiner does not point to any particular teachings in the references to exemplify his point disclosing a siloxane which is within the scope of or structurally obvious from the trisiloxane polyether claimed herein.

The examiner further states that “Keil, for example, is cited and discloses siloxane copolymers which contain one or more of the polydiorganosiloxanes segments and one or more polyoxyalkylene segments as defined at col. 5, lines 15-68 [of Keil]” (answer: p. 3). The examiner has not explained how a person having ordinary skill in the art taking the combined teachings of Ansher-Jackson, Bolich and Keil would have been led to appellants’ claimed trisiloxane polyether.

Keil discloses a composition for an antiperspirant stick which comprises an aqueous solution of an astringent dispersed in a solid matrix of methylsiloxane fluid, solid alkanolic acid, a polydiorganosiloxane-polyoxyalkylene copolymer containing at least one polydiorganosiloxane segment, and a waxy ester (col. 2, line 33 to col. 3, line 12). Keil discloses a wide variety of polydiorganosiloxane-polyoxyalkylene polymers (col. 4, line 54 to col. 7, line 3) which may include the siloxane polyethers within the scope of the claimed subject matter. However, the examiner has not analyzed the reference and explained how the teachings of the reference would render the claimed trisiloxane obvious.

The combined teachings of the references relied upon by the examiner also do not present a *prima facie* case because the examiner has not explained how “it would have been obvious to one having ordinary skill in the art at the time of the invention to select the claimed polyether modified siloxane with the reasonable expectation of deriving a hair conditioning composition” (answer: p. 3). Ansher-Jackson and Bolich teach that the siloxane polyethers or silicone copolyols are used as secondary surfactants in the hair conditioning compost. Keil does not disclose the purpose for including the polydiorganosiloxane-

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polyoxyalkylene polymers in the antiperspirant composition. In view of the fact that Keil does not teach or suggest that his polydiorganosiloxane-polyoxyalkylene polymers can be used as surfactants or in hair conditioning compositions, we find no basis upon which the examiner can reach his conclusion of obviousness. For the foregoing reasons, the examiner's rejection of claims 7-11 under 35 U.S.C. § 103 over the combined teachings of Ansher-Jackson, Bolich and Keil is reversed.

REVERSED

CAMERON WEIFFENBACH)
Administrative Patent Judge)
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) BOARD OF PATENT
CHUNG K. PAK)
Administrative Patent Judge) APPEALS AND
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) INTERFERENCES
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THOMAS A. WALTZ)
Administrative Patent Judge)

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