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| 16/091,212                          | 10/04/2018  | Katerina KARAGIANNI  | 083490-000036       | 1024             |
| 190849                              | 7590        | 08/27/2025           | EXAMINER            |                  |
| Vorys, Sater, Seymour and Pease LLP |             |                      | RONEY, CELESTE A    |                  |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KATERINA KARAGIANNI and DENIS BENDEJACQ

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Appeal 2025-001586  
Application 16/091,212  
Technology Center 1600

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Before DONALD E. ADAMS, RACHEL H. TOWNSEND, and  
DAVID COTTA, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from Examiner's decision to reject claims 1–7, 9–13, 17–19, and 21–26 (*see* Final Act.<sup>2</sup> 1).

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

We REVERSE.

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<sup>1</sup> “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as “SPECIALTY OPERATIONS FRANCE” (Appellant’s March 1, 2024, Appeal Brief (“Appeal Br.”) 2).

<sup>2</sup> Examiner’s June 1, 2023, Final Office Action.

## STATEMENT OF THE CASE

Appellant's disclosure "relates to cosmetic compositions exhibiting both conditioning and cleansing properties for the simultaneous care and washing of keratinous materials" (Karagianni<sup>3</sup> ¶ 3). Appellant's claim 1, the only independent claim on this record, is reproduced below:

1. A cosmetic cleansing composition comprising at least:
  - a) one or more vegetable oil(s), in an amount of at least 0.3 pbw relative to the total weight of the composition,
  - b) from about 2 pbw to about 40 pbw, relative to the total weight of the composition, of a surfactant system comprising at least one sultaine surfactant and at least one taurate surfactant, and
  - c) at least 0.1 pbw, relative to the total weight of the composition, of *a non-ionic solubilizer* which is a mono- or poly- alkyl or alkenyl ester of an alkoxyated fatty acid, with said fatty acid being a saturated or unsaturated hydroxylated C8-C22 fatty acid.

(Appeal Br. 33 (emphasis added).)

The following grounds of rejection are before us for review:

- I. Claims 1–7, 9–13, 15–19, and 21–25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bendejacq.<sup>4</sup>
- II. Claim 26 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Bendejacq and Hough.<sup>5</sup>

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<sup>3</sup> Karagianni et al., US 2019/0110979 A1, published Apr. 18, 2019.

<sup>4</sup> Bendejacq et al., US 2012/0021025 A1, published Jan. 26, 2012.

<sup>5</sup> Hough et al., US 9,090,727 B2, issued July 28, 2015.

## ISSUE

Does the preponderance of evidence on this record support a conclusion of obviousness?

## ANALYSIS

Appellant’s claim 1, the only independent claim on this record, is reproduced above. As emphasized above, the cosmetic cleansing composition of Appellant’s claim 1 comprises, *inter alia*, a non-ionic solubilizer. For the following reasons, we find that Examiner failed to establish, by a preponderance of evidence, that Bendejacq alone or in combination with Hough supports a conclusion of obviousness.

### I

The rejection over Bendejacq:

Bendejacq discloses: “[A]queous compositions that are suitable as shampoos,” wherein “[t]he composition comprises an oil and provides an interesting hair treatment, especially an interesting hair treatment targeting damaged hair” (Bendejacq ¶ 1). In particular, Bendejacq discloses a composition comprising:

- a) a structured surfactant system comprising:
  - non cationic surfactant(s), and
  - a cationic co-surfactant
- b) an oil, being
  - b1) a silicone oil, or
  - b2) an oil of mineral origin, and
- c) optionally a cationic or ampholytic polymer.

(Bendejacq ¶¶ 7–11.) Bendejacq discloses that its “composition might comprise some further ingredients,” that “can impart some further specific properties to the composition,” wherein “one skilled in the art knows such ingredients and/or properties that can be associated to these and/or

appropriate amounts (Bendejacq ¶ 170). “In one embodiment . . . [Bendejacq discloses that its] composition comprises a rheology modifier,” which “are known by the one skilled in the art,” and “can be used to adjust the viscosity and/or the stability of the composition” (Bendejacq ¶ 171). Bendejacq exemplifies a multitude, i.e. nearly four columns worth, of different rheology modifiers, that can be of natural or synthetic origin (*see e.g.*, Bendejacq ¶¶ 173–174).

Among Bendejacq’s extensive listing of rheology modifiers, Examiner selects PEG-18 Castor Oil Dioleate (*see* Ans.<sup>6</sup> 4 (citing Bendejacq ¶ 174)). Although Bendejacq identifies PEG-18 Castor Oil Dioleate as a rheology modifier, Examiner characterizes this compound as a non-ionic solubilizer and more specifically a non-ionic solubilizer that would have been useful to formulate Appellant’s claimed invention (*see id.*). Examiner does not identify, and we do not find, a disclosure of a solubilizer of any type in Bendejacq (*see generally* Appeal Br. 21). Examiner, however, directs attention to Appellant’s Specification, wherein Appellant disclosed PEG-18 Castor Oil Dioleate, “an oleic acid diester of ethoxylated castor oil,” “as a suitable solubilizer of the invention . . . that maintains the transparency of the composition” (Ans. 10–11 (citing Karagianni ¶¶ 92, 94–96); *see also id.* at 16 (citing Karagianni ¶¶ 92, 94–96) (Examiner finds that Appellant discloses that “PEG-18 Castor Oil Dioleate, which maintains transparency of the instant composition . . . is the same compound as that of Bendejacq, and has the same properties.”)).

Examiner did not establish an evidentiary basis on this record to support a finding that rheology modifiers in general in Bendejacq’s

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<sup>6</sup> Examiner’s May 14, 2024, Answer.

extensive listing would exhibit the properties of a non-ionic solublizer, which is the component required by Appellant's claimed invention, or would maintain the transparency of that composition when used. Examiner also failed to establish an evidentiary basis to support a finding that those of ordinary skill in this art would have recognized PEG-18 Castor Oil Dioleate as a suitable solubilizer for use in a cleansing composition such that it would maintain the transparency of Appellant's composition (Ans. 10–11 (relying on Appellant's Specification for a disclosure that PEG-18 Castor Oil Dioleate can be used to maintain the transparency of a composition within the scope of Appellant's claimed invention.)).

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Further, “[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (citing *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984)). “It is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *Fritch*, 972 F.2d at 1266 (citing *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991)).

In sum, we find Examiner findings, rationale, and conclusion on this record to be (i) the epitome of impermissible hindsight bias; (ii) conclusory; and (iii) unsupported by the evidence of record.

## II

The rejection over the combination of Bendejacq and Hough:

Examiner failed to establish an evidentiary basis on this record to support a conclusion that Hough makes up for the deficiencies in Bendejacq discussed in § I above. Therefore, this rejection fails for the same reasons discussed above.

### CONCLUSION

The preponderance of evidence on this record fails to support a conclusion of obviousness.

Rejection I: The rejection of claims 1–7, 9–13, 15–19, and 21–25 under 35 U.S.C. § 103 as being unpatentable over Bendejacq is reversed.

Rejection II: The rejection of claim 26 under 35 U.S.C. § 103 as being unpatentable over the combination of Bendejacq and Hough is reversed.

### DECISION SUMMARY

The following table summarizes our decision:

| <b>Claim(s) Rejected</b> | <b>35 U.S.C. §</b> | <b>Reference(s)/ Basis</b> | <b>Affirmed</b> | <b>Reversed</b>         |
|--------------------------|--------------------|----------------------------|-----------------|-------------------------|
| 1–7, 9–13, 15–19, 21–25  | 103                | Bendejacq                  |                 | 1–7, 9–13, 15–19, 21–25 |
| 26                       | 103                | Bendejacq, Hough           |                 | 26                      |
| <b>Overall Outcome</b>   |                    |                            |                 | 1–7, 9–13, 15–19, 21–26 |

REVERSED