

Unilever, Inc. dba Unilever v. The Procter & Gamble Company: Denying Institution of Inter Partes Review IPR2014-00506

Article By:

Intellectual Property Litigation Drinker Biddle

Takeaway: The Board has broad discretion to deny a petition that raises substantially the same prior art or arguments previously presented to the Office.

In its [Decision](#), the Board denied *inter partes* review of challenged claims 13, 14, 16, 20-22, 24, 25, 27, 31, and 33 of the '569 patent, which relates to a shampoo composition and method for providing anti-dandruff efficacy and hair conditioning. Petitioner had previously filed a Petition in IPR2013-00505, challenging claims 1-33 of the '569 patent, in which the Board granted review of claims 1-12, 15, 17-19, 23, 26, 28-30, and 32, but denied review of the claims in the instant proceeding. Petitioner also filed a concurrent Motion for Joinder, seeking to join the instant Petition with the '505 proceeding.

Each of the asserted grounds of unpatentability was an obviousness challenge under 35 U.S.C. § 103 based on at least several of Kanebo, Kalla, Evans, Sime, Hoshowski, Cardin, Cseh, Cosmedia, Cothran, Ramachandran, Hoeschele, or Bar-Shalom. The Board began its analysis by noting that under 35 U.S.C. § 325(d), the Board “has broad discretion to deny a petition that raises substantially the same prior art or arguments previously presented to the Office.” The Board then noted that “the instant Petition challenges each claim that was denied review in the '505 proceeding.”

The Board noted that of the thirteen pieces of prior art relied on in the instant Petition; six were previously raised in the '505 proceeding. The Board went on to note that Petitioner had not presented any argument or evidence showing the seven new prior art references were unavailable or not known to Petitioner at the time of filing the '505 Petition. By the Board's count, eight of the grounds in the instant Petition were based at least in part on a reference (Kanebo) cited in the previous '505 proceeding, and a ninth ground based also based on art (Reid, Sime, and Cardin) previously cited in the '505 proceeding. In view of these points, the Board exercised its discretion under 35 U.S.C. § 325(d) by rejecting the instant Petition because the same or substantially the same prior art or arguments were previously presented to the Office in the '505 proceeding.

After indicating its decision to deny the instant Petition, the Board went on to order that Petitioner's Motion for Joinder with IPR2013-00505 was denied as moot.

***Unilever, Inc. dba Unilever v. The Procter & Gamble Company,
IPR2014-00506***

Paper 17: Decision Denying Institution of Inter Partes Review

Dated: July 7, 2014

Patent 6,974,569 B2

Before: Lora M. Green, Grace Karaffa Obermann, and Rama G. Elluru

Written by: Obermann

Related Proceeding: IPR2013-00505

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