

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SALVACION USA, INC.,
Petitioner,

v.

TRUTEK CORP,
Patent Owner.

IPR2024-00711
Patent 8,163,802 B2

Before ULRIKE W. JENKS, SHERIDAN K. SNEDDEN, and
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

DECISION

Granting Petitioner's Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Salvacion USA, Inc. (“Petitioner”) filed a Request for Rehearing (Paper 34, “Req. Reh’g” or “Request”) of our Final Written Decision (Paper 33, “Final Dec.”). Trutek Corp. (“Patent Owner”) filed an Opposition to Petitioner’s Request. Paper 35 (“Opposition” or “Opp.”). In its Request, Petitioner contends that we overlooked Petitioner’s ground asserting that dependent claim 3 was obvious over the combination of Rolf and Wahi ’005. Req. Reh’g 1–3.

For the reasons discussed below, we grant Petitioner’s Request to reconsider the teachings of Rolf and Wahi ’005 in relation to the subject matter of claim 3. We also provide our analysis determining that Petitioner has demonstrated by a preponderance of the evidence that claim 3 of the ’802 patent would have been obvious over the combination of Rolf and Wahi ’005 and modify our Final Written Decision accordingly.

II. LEGAL STANDARD

A party dissatisfied with a decision of the Board may file a request for rehearing. 37 C.F.R. § 42.71(d). The burden of showing that a decision should be modified lies with the party challenging the decision. *Id.* The request for rehearing must identify, specifically, all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. *Id.*

A rehearing request is not an opportunity for a party to reargue its case or merely to express disagreement with the underlying decision. Nor is it an opportunity for a party to present new arguments that were not in its original submissions.

III. ANALYSIS

A. Decision on Rehearing

Relevant to Petitioner’s challenge combining the teachings of Rolf and Wahi ’005, our Final Written Decision addresses the patentability of claims 1, 2, and 8 but does not provide a discussion directly related to Petitioner’s specific challenge to claim 3 advanced at page 60 of the Petition (Paper 2, “Pet.”). Final Dec. 36–37. Patent Owner does not dispute that our Final Written Decision overlooks Petitioner’s specific challenge to claim 3 combining the teachings of Rolf and Wahi ’005. *See generally* Opp. Rather, in its Opposition, Patent Owner presents substantive argument responsive to the merits of Petitioner’s challenge to claim 3.

Having considered the parties’ positions and evidence of record, we are persuaded by Petitioner’s contentions that the Final Written Decision does not directly address Petitioner’s challenge as to whether dependent claim 3 would have been obvious over the combination of Rolf and Wahi ’005. Accordingly, we grant Petitioner’s Request. We now reconsider the arguments and evidence related to whether claim 3 would have been obvious over the combination of Rolf and Wahi ’005 and modify our Final Written Decision to include the following discussion.

B. Asserted Obviousness of Claim 3 over the combination of Rolf and Wahi ’005

Claim 3 depends from claim 2 and further recites “wherein the at least one cationic agent is a polymeric quaternary ammonium compound.” Ex. 1001, 49–52. In our Final Written Decision, we determined that Wahi ’005 discloses each element of claims 2 and 3, thereby anticipating claims 2 and 3. Final Dec. 32–34. We also determined that Rolf discloses each element of claim 2, thereby anticipating claim 2. *Id.* at 34–35. In its

Petition, Petitioner additionally combines Rolf with Wahi '005 and contends that claim 3 would have been obvious over this combination. In particular, Petitioner contends that Wahi '005 discloses Celquat SC-240C (a polymeric quaternary ammonium compound) and that a person of ordinary skill in the art would have been motivated to substitute Rolf's quaternary ammonium compounds (quat-15) with Celquat SC-240C because both Rolf with Wahi '005 are "directed to methods of preventing respiratory infection via the function of the compositions." Pet. 60 (citing Ex. 1008 ¶¶ 20, 148; Ex. 1007 Abstract); *see also* Ex. 1002 ¶ 438 ("A POSITA would find it obvious to modify Rolf with a different quaternary ammonium compound: Celquat SC-240C as taught in Wahi '005.").

Patent Owner presents arguments relevant to the HOLD function of the challenged claims, which we have previously addressed (*see* Final Dec. 32–43), but does not present arguments or direct us to evidence against Petitioner's challenge specific to the limitation of dependent claim 3. *See generally* PO Resp. Furthermore, Patent Owner's arguments and evidence of secondary considerations fail to establish a nexus to dependent claim 3. *Id.* at 21–23.

Having considered the parties' positions and evidence of record, summarized above, we determine that Petitioner has demonstrated by a preponderance of the evidence that claim 3 would have been obvious over Wahi '005, alone or in combination with Rolf. As discussed above, we previously determined that the preponderance of the evidence supports Petitioner's assertion that claim 3 is anticipated by Wahi '005. Final Dec. 32–34. Because "anticipation is the epitome of obviousness," we are persuaded that claim 3 would have been obvious over Wahi '005, either alone or in combination of Rolf. *In re McDaniel*, 293 F.3d 1379, 1385 (Fed.

Cir. 2002). Moreover, we are also persuaded by Petitioner's undisputed contention that Rolf's quat-15 and Wahi '005's Celquat SC-240C were equivalents and known to be used for the same purpose and that it would have been obvious to substitute one for the other, thereby rendering the subject matter of claim 3 obvious over the asserted combination. *See Almirall, LLC v. Amneal Pharms. LLC*, 28 F.4th 265, 273 (Fed. Cir. 2022) (It is obvious to "substitute one known [material] for another. Each may be effective at a different concentration in different formulations, but that is just a property of the particular known material, subject to conventional experimentation.").

IV. CONCLUSION

We grant Petitioner's Request for Rehearing. We modify our analysis in determining that Petitioner has demonstrated by a preponderance of the evidence that claim 3 of the '802 patent would have been obvious over the combination of Rolf and Wahi '005.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Request for Rehearing is granted;

FURTHER ORDERED that claim 3 of the '802 patent is unpatentable as obvious over the combination of Rolf and Wahi '005; and

FURTHER ORDERED that the Final Written Decision is modified to include our analysis herein regarding whether claim 3 would have been obvious over the combination of Rolf and Wahi '005.

IPR2024-00711
Patent 8,163,802 B2

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