

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Dr. Squatch LLC

Petitioner

v.

The Procter & Gamble Company

Patent Owner

Case IPR2024-01498

U.S. Patent No. 11,844,752

PATENT OWNER’S REQUEST FOR DIRECTOR REVIEW

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** All emphasis added herein, unless otherwise indicated **

Pursuant to 37 C.F.R. § 42.75, Patent Owner The Procter & Gamble Company (“P&G”) respectfully requests Director Review of the Board’s Final Written Decision (Paper 30, “FWD”) determining all challenged claims of U.S. Patent No. 11,844,752 (“the ’752 Patent”) unpatentable. Specifically, P&G requests the Director: (1) vacate the FWD and reverse the Board’s finding as to unpatentability of all claims (or, in the alternative remand) because the FWD is based on a clearly erroneous interpretation of the claimed hardness limitation; (2) vacate and reverse the Board’s findings of obviousness as to Grounds I-VIII (or in the alternative, remand) for failing to articulate sufficient motivation to combine the natural, aluminum-free references with non-natural aluminum- and silicone-based antiperspirants; and/or (3) vacate the FWD and dismiss the Petition in its entirety due to Petitioner’s failure to properly identify all real parties in interest. This Request for Director Review is based on similar errors of law and abuse of discretion P&G outlined in its Requests for Director Review in the following related IPRs: IPR2024-01104, IPR2024-01105, IPR2024-01173, and IPR2024-01174.

I. BACKGROUND

P&G is a U.S.-headquartered, world leader in the consumer products industry, manufacturing daily use products under iconic brands that include Tide, Pampers, Gillette, Crest, Dawn, Old Spice, and Secret. P&G invests heavily in formulation technology to provide everyday products of superior performance and value for

consumers. To protect its innovations, P&G maintains thousands of active U.S. patents, many of which relate to unique and inventive combinations and formulations of generally known ingredients.

At issue here is one such patent, focused on improved aluminum-free, natural deodorant sticks. At the time of the invention, natural deodorant sticks tended to be either too hard and uncomfortable to apply as a result of being draggy across the skin, or too soft or greasy, leading to sticky residue or stained clothing. With the invention described and claimed in the '752 Patent, P&G developed new and improved natural deodorant stick formulations that provide desired skin feel, glide, and hardness, without irritation, that had eluded the prior art natural deodorant sticks. (See Paper 13 at 1, 5-7, "POR".) P&G has received numerous patents covering its natural deodorant formulation technology in addition to the '752 Patent.

Just as in the four related IPRs, the FWD here finds the claimed invention unpatentable by failing to follow the binding legal requirements set forth in the Federal Circuit's *Phillips* opinion for properly determining claim scope and the Supreme Court's *KSR* decision for proving obviousness. Additional legal errors that pervade the FWD in IPR2024-01104, -01105, -01173, and -01174 are also present here.

First, the FWD erroneously imports an extrinsic stick hardness testing methodology into all claims over the methodology described in the '752 Patent

specification. Like many of the claims of the patents at issue in the requests for Director Review of the IPRs referenced above, all claims of the '752 Patent provide a deodorant stick having “a hardness from about 80 mm*10 to about 140 mm*10, *as measured by penetration with ASTM D-1321 needle.*” (E.g., Ex. 1001 at cls. 1, 15, 18, 19, “’752”.) Thus, as was the case for many of the claims in P&G’s other patents, the Board was required to determine the meaning of the claimed phrase “as measured by penetration with ASTM D-1321 needle,” before it could assess whether Petitioner’s relied upon art, Bianchi-254, disclosed the claimed hardness range as Petitioner contended. The Board and Petitioner alike recognized that interpreting this phrase required determining which hardness testing methodology the claims are based on—*i.e.*, “measured by . . . needle” references a specific *test methodology* that uses the specified needle. (See IPR2024-01104, Paper 34 at 11:23-12:9, “Related Hearing Tr.”.) But rather than interpreting this phrase by looking to the *modified* ASTM hardness test methodology described in the '752 Patent specification, as required by *Phillips*, the Board instead improperly adopted Petitioner’s expert’s opinion (*i.e.*, disfavored extrinsic evidence) that the claim incorporated the *standard* ASTM hardness testing methodology used in Bianchi-254.¹ Only then could the

¹ Bianchi-254 uses the DIN 51-579 standard to test the hardness of its sticks, but the parties agree that the DIN 51-579 and ASTM D-1321 standards are the same in relevant part (*i.e.*, they both use a total load of 100 grams).

Board use the hardness limitation in Bianchi-254 to find the claim unpatentable. This error is dispositive as the obviousness finding of all claims and cannot otherwise stand.

Second, the Board abused its discretion as to Grounds I-VIII in finding that a POSA would have looked to Bianchi-254, which discloses non-natural aluminum- and silicone-based antiperspirant sticks, and combined its teachings with the very different anhydrous, natural, aluminum-free and silicone-free sticks of Petitioner's primary references (Lesniak and Native) to arrive at the claimed inventions. Petitioner had no answer to P&G's expert testimony regarding the vast differences in the stick technologies of these references, and instead urged the Board to ignore this evidence entirely in favor of its expert's *ipse dixit*. In so doing, the Board failed to articulate any reason or motivation for a POSA to make these combinations, running headlong into *KSR* and its progeny which exist precisely to safeguard against picking and choosing elements from the prior art using impermissible hindsight.

Third, P&G submits that Petitioner has intentionally and improperly avoided its duty to identify the Real Parties in Interest under 37 C.F.R. § 42.8. For the reasons discussed herein, P&G respectfully requests the Director vacate the FWD.

II. LEGAL STANDARD FOR DIRECTOR REVIEW

“Requests for Director Review of a Board’s final decision under 35 U.S.C. §§ 135, 318, or 328, decisions granting rehearing of such a decision, or any other decision concluding a proceeding brought under 35 U.S.C. §§ 135, 311, or 321, shall be limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” *See* Director Review Process at 2.B, Availability of Director Review: Proceedings under part 42 of 37 C.F.R. (last modified March 18, 2025). “An abuse of discretion is found if a decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016).

III. ARGUMENT

P&G respectfully submits that the FWD: (1) rests on clearly erroneous findings regarding the ’752 Patent’s disclosed hardness test, and (2) represents an erroneous conclusion of law and an abuse of discretion in finding a motivation to combine Bianchi-254 with other prior art references with vastly (and undisputedly) different deodorant stick technologies.

A. The FWD Clearly Erred By Using Extrinsic Evidence To Import The Wrong Test Into The Claims.

The Board improperly interpreted the hardness limitation of the independent claims to incorporate the standard 100-g ASTM D-1321 / DIN 51-579 hardness test of the prior art, rather than the non-standard 50-g test as described in the '752 Patent specification. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) (*en banc*) (holding that the patent and its specification are favored over extrinsic evidence in determining how to read claim terms).

Petitioner relied on Bianchi-254 as allegedly disclosing the hardness limitation of all claims. As noted above, all claims of the '752 Patent provide a deodorant stick with “a hardness from about 80 mm*10 to about 140 mm*10, *as measured by penetration with ASTM D-1321 needle.*” (E.g., '752 at cl. 1.) To properly evaluate Petitioner’s argument that Bianchi-254 discloses this limitation, the Board was required to interpret the claimed hardness range. In the related IPRs as to similar limitations, the Board recognized that doing so necessitated looking beyond the claim language to the test methodology used to “measure[] by penetration with ASTM-D1321 needle.” Petitioner agreed. (Related Hearing Tr. at 11:23-12:9.)

In its POR, P&G explained that the '752 Patent’s claimed hardness range was not the same as in Bianchi-254, because the penetration testing methodology in the '752 Patent uses a needle half the weight of the test method used in Bianchi-254,

which impacts penetration distance and thereby, reported hardness values. In other words, while the nominal hardness values *appear* to overlap, they do not, in fact, line up because the hardness test methodology used to arrive at the hardness values claimed in the '752 Patent is meaningfully different from the standard test used in Bianchi-254 to determine its disclosed hardness values. (POR at 31-39, 53-57; Paper 21 at 2-6, “Sur-Reply”.)

Notwithstanding this clear intrinsic evidence of the '752 Patent's different test, the FWD incorrectly found that “the evidence of record fails to support Patent Owner's position that the '752 patent discloses a unique hardness test,” different from the standard ASTM / DIN test of Bianchi-254. (FWD at 28.) In particular, the FWD concluded that the '752 Patent “fail[s] to expressly disclose performing the hardness test without the required 50-gram weight placed above the penetrometer needle, and its silence to that fact is insufficient to persuade us that a different test was ultimately intended or performed.” (FWD at 29.) The '752 Patent's specification explicitly contradicts the FWD's erroneous conclusion.

The '752 Patent describes the needle penetration test used to assess hardness of its invention, which the patent explains is “based on”—*i.e.*, not the same as—“the American Society for Testing and Materials Methods D-5, D1321 and D217 and DIN 51 579.” ('752 at 11:33-35; POR at 32-34; Sur-Reply at 2-6.) It is undisputed that the ASTM D-1321 and DIN 51-579 standards employ a total testing load of 100

grams. (*See, e.g.*, Paper 16 at 12-13, “Reply”; POR at 32-34; Ex. 1087 (ASTM standard); Ex. 2019 (DIN standard).) Deviating from these standard tests, the ’752 Patent teaches the POSA to use a needle assembly where “the total weight of the shaft and needle is 50 ± 0.2 grams when the shaft is in free fall.” (’752 at 12:7-8; POR at 32-34.) There is no dispute that the needle and shaft (also referred to as the “rod”), together, weigh just 50 grams. (*See Reply* at 12-13.) In providing instructions on how to perform the test, the ’752 Patent explicitly states in its “Hardness Testing Method” section: “[t]he rod is then released and allowed to travel downward, *driven **only** by the weight of the needle (or cone) and the rod.*” (Sur-Reply at 2-6; ’752 at 11:45-46.) The patent twice calls for using “**only**” the needle and rod, *i.e.*, “**only**” 50 grams. (*Id.*) The patent nowhere mentions the use of the 100-gram total load required by the standard ASTM / DIN tests, or use of the standard ASTM / DIN tests unmodified.

Instead of relying on this intrinsic evidence to interpret the meaning of the hardness limitation, the FWD relies on the opinion of Petitioner’s expert, who stated for the first time *in a Reply declaration* that the ’752 Patent’s discussion of a 50-g weight needle assembly was solely for “calibration,” because the description of the 50-g needle assembly appears in the patent’s “[p]eriodic calibration” section. (FWD at 29-30.) This extrinsic expert opinion evidence is less probative than the intrinsic record under *Phillips*, and in any event, is wrong.

The 50-g needle assembly is not only used in the calibration section, but also, explicitly, in the prior section of the '752 Patent discussing its “Hardness Test Method—Penetration Measurement for Deodorant Finished Products.” (*E.g.*, Sur-Reply at 4; '752 at 11:28-48.) There, by stating that the rod is driven “*only*” by the needle and rod (which indisputably weighs 50 grams), the '752 Patent explicitly disavows the additional 50-g weight placed above the needle that results in the total 100-g load used in the ASTM D-1321 / DIN 51-579 test of Bianchi-254. It would also be non-sensical for the patent to describe calibration with one needle assembly weight and then to require the use of a different needle assembly weight for testing without expressly discussing a change to the needle assembly to perform the testing. (*See* Sur-Reply at 3-4.) Indeed, the standard ASTM D-1321 test requires *adding* a 50-g weight to the 50-g needle assembly for a total load of 100 grams. (Ex. 1087 at 5-6 (“Place a 50-g weight above the penetrometer needle, making a total load of 100 ± 0.015 g for the needle and all attachments.”); POR at 32-34.) The '752 Patent’s explicit description in the specification of the 50-g needle assembly *only*—no addition of the 50-g weight above the needle as in the ASTM D-1321 standard—and reference to the 50-g needle assembly *only* in the testing methodology section eviscerates the FWD’s conclusion that the '752 Patent “fail[s] to expressly disclose performing the hardness test without the required 50-gram weight placed above the penetrometer needle” (FWD at 29.)

The hardness test described in the '752 Patent is thus clearly and significantly different from the standard ASTM / DIN test on which Bianchi-254's hardness values are based. As a result, the Petition fails to establish a *prima facie* case of obviousness between Bianchi-254's hardness ranges and the '752 Patent's claimed range. The Board's conclusion that "a POSA would have been motivated to formulate Lesniak's deodorant stick to be within the claimed hardness range, *which overlaps with ranges known to be acceptable to consumers as disclosed in Bianchi '254,*" (FWD at 30) and similar finding as to Native and Bianchi-254, is thus clearly erroneous under *Phillips* and must not be permitted to stand. P&G respectfully requests that the Director vacate and reverse the FWD as to all claims.

B. The FWD Fails To Comply With The Motivation To Combine Requirement For Grounds I-VIII.

The Board also erred in failing to articulate any reason or motivation a POSA would have had to combine the teachings of Bianchi-254 with the very different types of sticks described in Petitioner's primary references, Lesniak (Grounds I-IV) and Native (Grounds V-VIII).

Unrebutted expert testimony of record shows that the stick technologies and natural-ingredient approaches of Petitioner's primary references (Lesniak and Native) are vastly different from its secondary references like Bianchi-254. (*E.g.*, POR at 10-13, 30-31, 34-36, 53, 55-59; Sur-Reply at 1, 23-24.) Lesniak and Native are anhydrous, natural compositions, while Bianchi-254 is primarily silicone-based.

(*Id.*; Ex. 2011 at ¶ 36.) As is common knowledge, silicone—a decidedly non-natural ingredient—can be used to reduce drag on human skin, and improve overall glide and skin-feel.

When it comes to assessing the hardness limitation of the claims, importantly, Bianchi-254 discloses and claim compositions having over 50% non-natural ingredients, *e.g.*, aluminum and volatile silicones. (POR at 10-13, 30-31, 34-36, 53, 55-59.) Its hardness disclosure must be read in that light—it discloses a certain level of desired hardness *for 50% silicone/aluminum stick formulations*. As P&G argued to the Board, and explained in its other requests for Director Review, there is simply no reason that a POSA seeking to develop a *natural* aluminum-free deodorant, would have been motivated to look to the aluminum- and silicone-laden Bianchi-254 for its hardness (or anything else).

Petitioner also argued the POSA would have been motivated to implement Bianchi-254's weight percentages and primary structurant (*see, e.g.*, Grounds I, V, VII), and the FWD's acceptance of Petitioner's combinations in those Grounds is premised on the same error. That is, there would have been no reason for a POSA to look to the structurants and quantities of particular natural ingredients in Bianchi-254, where Bianchi-254 discloses only non-natural, aluminum- and silicone-based antiperspirants comprising vast quantities (50+%) of these non-natural ingredients. (POR at 30-31, 39-40, 53, 57-59.) Why would a POSA look to a completely

different stick technology filled with ingredients she is trying to avoid to determine the percentage of the other required ingredients?

Neither Petitioner nor the Board was able to fill these legal voids. The Petition did not explain why a POSA would have looked to the heavily aluminum- and silicone-containing Bianchi formulations to determine the appropriate hardness level for a natural deodorant free of aluminum and silicone, or the amounts of required ingredients to be used. (POR at 34-37, 55-59.) And neither Petitioner nor the FWD ever addressed P&G's arguments as to the difference in stick technologies.

“[T]he prior art must be considered *as a whole* for what it teaches.” *Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1166 (Fed. Cir. 2006). And the obviousness inquiry typically requires an analysis of “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)). Yet, here, the Board ignored much of Bianchi-254’s disclosures and did not provide any reason *why* the very different teaching of Bianchi-254, full of forbidden and hardness-impactful ingredients, would have been of interest to a POSA in assessing either hardness or amounts and types of ingredients. There is no evidence from the prior art that a POSA would have made the Petitioner’s proffered combinations, and the Board

offers no genuine reason for doing so. Only by leapfrogging over this legal requirement did the Board reach its conclusions that (i) a POSA would look to the silicone/aluminum-driven hardness of the non-natural Bianchi composition to modify the natural compositions of Lesniak and Native and arrive at P&G's invention; and (ii) a POSA would look to the heavily silicone- and aluminum-based antiperspirants of Bianchi-254 to determine the amount and types of other, natural ingredients to use in developing a natural, aluminum-free deodorant sticks.

By failing to articulate a reasoned motivation to combine, with rational underpinning, to support *prima facie* obviousness, the Board improperly shifted the burden to P&G to show why known elements in the prior art could not simply be combined because they were known. Indeed, the FWD takes for granted that a POSA would have aimed for Bianchi-254's hardness simply because those ranges appear in the prior art as allegedly reflecting "ranges known to be acceptable to consumers" (FWD at 30), without any discussion of a need to modify Lesniak or Native in the first place, or without any discussion of how or why a POSA would have sought the same hardness in a natural versus non-natural deodorant stick, with vastly different ingredients that may contribute different properties to the stick and affect its hardness and stability. (*E.g.*, POR at 34-37, 55-59.) Similarly, with respect to the amounts of ingredients, the Board cavalierly suggests that a POSA would freely select the amount of an ingredient to be used in one personal care composition

from another, without accounting for wholly different base technologies. (FWD at 47-49.) This lumping together of huge swaths of disparate “personal care compositions” is inadequate under the law. Such “reasoning” would render any “personal care composition” of known ingredients *prima facie* obvious. This type of cursory, conclusory, hindsight-based analysis infects the other combinations in the FWD as well. For example, here, the Board again endorsed the combination of Lesniak and Phinney without regard to the incompatible disclosures between the two references. *See* Case No. IPR2024-01104, Paper No. 36 at 13.

The FWD clearly erred by failing to articulate a motivation to combine Lesniak and Native with secondary reference Bianchi-254 (and also Phinney) in contravention of *KSR* and *Kahn*. Because this error is dispositive, P&G respectfully requests that the Director vacate the FWD.

C. Petitioner Failed To Properly Identify All Real Parties in Interest Under 37 CFR § 42.8

37 C.F.R. § 42.8(a)(3) requires a party to update its mandatory notices within 21 days of a “change of information” relating to the real parties-in-interest. As explained in IPR2024-01104, Petitioner was acquired by Unilever on September 2, 2025. P&G contacted Petitioner on October 20, 2025, to inquire whether its mandatory notices were accurate. On October 21, Petitioner updated its mandatory notice across all five related IPRs, ambiguously stating, “[w]hile Dr Squatch, LLC remains the real party in interest, out of an abundance of caution, Dr. Squatch, LLC

advises the Board that is [*sic*] now owned, indirectly, by Unilever PLC.” (Paper 18 at 1.) At the October 22 oral hearing for the related IPRs, P&G raised concerns about this updated notice. (Related Hearing Tr. at 31:7-19.) The Board noted that it would take P&G’s request under advisement, but, the FWD did not address real parties-in-interest, and Petitioner has still not clarified all real parties-in-interest, which of course affects important issues such as estoppel and potential conflicts of interest. Petitioner’s failure to identify all real parties-in-interest as required by 35 U.S.C. §312(a)(2), and within the deadline specified in 37 C.F.R. §42.8(a)(3), calls into question whether the Petition should be afforded a new filing date under *Corning Optical Communications RF, LLC v. PPC Broadband Inc.* (IPR2014-00440, Paper 68) as of Petitioner’s October 21 disclosure, in which case the Petition is time-barred under 35 U.S.C. §315(b). In view of the above, P&G respectfully requests that the Director vacate the FWD and dismiss the Petition.

IV. CONCLUSION

For the reasons set forth above, P&G respectfully requests that the Director grant review, and vacate and reverse the Board’s Final Written Decision as to Grounds I-VIII.

Date: April 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served on the counsel for Petitioner a true and correct copy of the foregoing by email on April 24, 2026, at the following address:

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