

Proposed Rejections by New Examiner

Claims 1-4 and 7 are rejected under 102(b) as anticipated by Menda et al. (US 4000317). The claimed compositions and methods require fumed silica to be applied to oily skin. Menda teaches a composition for reducing oiliness of skin, which leads to acne; the composition contains Cab-O-Sil, which is the same fumed silica used by Applicants. Claimed properties are therefore inherent. Claim 7 requires the fumed silica to have an average particle diameter of about 30 millimicrons. Menda teaches that their "ultimate" particle size is from 2-20 millimicrons in diameter, which is about 30 millimicrons.

Claims 1-5 are rejected under 35 U.S.C 102(b) as being anticipated by Fulton (US 4189501). Claims 1-4 recite a composition of fumed silica and a method of treating oily skin with the fumed silica. Claim 5 requires the addition of benzoyl peroxide. Fulton discloses a composition and method of treatment of acne containing fumed silica and benzoyl peroxide. Benzoyl peroxide is disclosed in col. 5, lines 25-35 and fumed silica is disclosed as an appropriate thickener in col. 5, lines 5-10. Per MPEP 2111.02, the preamble has not been accorded patentable weight.

Claims 6 and 8 are rejected as being obvious under 35 USC 103 over Menda and Fulton combined with Faryniarz et al. (US 7390431). Claim 6 requires that composition comprises benzoyl peroxide and about 2% fumed silica and claim 8 requires that the benzoyl peroxide be present in a range of 1 to 10% by weight. Menda teach that for daytime use, the composition can comprise 1.5 to 3% fumed silica, which discloses a value of "about 2%". Faryniarz teach a composition comprising benzoyl peroxide at about 2-15%, and that fumed silica can be used as a thickener and/or rheology modifier. There is also an example where the benzoyl peroxide is at 6.25% and the fumed silica can be up to 10%. Fulton also discloses a composition comprising benzoyl peroxide to treat acne, and fumed silica is cited as a choice for thickener. It would have been obvious to combine fumed silica and benzoyl peroxide to make a composition that is still

used to fight acne. Per MPEP 2144.06, “It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.” *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).