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**Datasheet for the decision  
of 29 April 2025**

**Case Number:** T 2657/22 - 3.3.10

**Application Number:** 16725023.2

**Publication Number:** 3284521

**IPC:** A61K8/9794, A61Q19/00,  
A61K8/36, A61K8/92

**Language of the proceedings:** EN

**Title of invention:**

COMPOSITIONS FOR LONG-LASTING MOISTURIZING COSMETIC FORMULATION COMPRISING UCUUBA BUTTER WITH HIGH CONCENTRATION OF MYRISTIC ACID, AS WELL AS THE USE OF SAID FORMULATION FOR THE PREPARATION OF A HIGHLY MOISTURIZING COSMETIC PRODUCT AND KIT.

**Applicant:**

Natura Cosméticos S.A.

**Headword:**

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 2657/22 - 3.3.10

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.10**  
**of 29 April 2025**

**Appellant:** Natura Cosméticos S.A.  
(Applicant) Avenida Alexandre Colares, n° 1188 , Bloco A  
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05106-000 São Paulo SP (BR)

**Representative:** Simmons & Simmons  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 4 August 2022  
refusing European patent application No.  
16725023.2 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** A. Zellner  
**Members:** M. Kollmannsberger  
F. Blumer

## Summary of Facts and Submissions

- I. The patent applicant appealed the decision of the Examining Division to refuse their patent application for lack of inventive step, Articles 97(2) and 56 EPC.
- II. The patent application relates to the cosmetic use of compositions containing ucuuba butter. Such compositions are said to be useful for long-term hydration of the skin.
- III. The following documents are referred to in the present decision:
- D1: WO 2011/011840 A1
- D2: All About the best Natural Oils and Butters, News Press: "Uccuba Butter"; 24 January 2015; <http://www.naturaloilsandbutters.com/uccuba-butter>
- D3: Fregonesi A., et al., "Brazilian oils and butters: The effect of different fatty acid chain composition on human hair physiochemical properties", J. Cosmet. Sci. 2009, 60, 273-280
- D6: Sampaio, P.: "Ucuuba"; in "Selected species and strategies to enhance income generation from Amazonian forests", Food and Agriculture Organization of the UN, Rome, May 1993

- IV. The independent and only claim of the appellant's main request, which corresponds to claim 1 of the claim set underlying the decision under appeal, reads as follows:

*"Cosmetic non-therapeutic use of a long-lasting moisturizing cosmetic formulation for providing skin hydration for at least 8 hours, wherein the formulation comprises 1 to 5% ucuuba (Virola surinamensis) butter as an active ingredient based on the total weight of the formulation, and wherein the concentration of myristic acid is equal to or greater than 70% based on the weight of said butter."*

- V. The Examining Division came to the conclusion that this use lacked an inventive step over D2 as document representing the closest state of the art. The use of ucuuba butter for skin hydration was known from D2 and any distinguishing feature of the claim was rendered obvious by common general knowledge, D1 or D3.

- VI. The appellant disputed that the claimed use would have been obvious for a skilled person when starting from the disclosure of D2. In particular, it referred to the long-lasting skin hydration achieved with compositions containing relatively low concentrations of ucuuba butter, and to the high concentration of myristic acid in the ucuuba butter that is used in these compositions.

- VII. The appellant requested that the decision under appeal be set aside and that a patent be granted based on the main request filed together with the statement setting out the grounds of appeal.

VIII. Oral proceedings were held on 29 April 2025. The decision was announced at the end of the oral proceedings.

### **Reasons for the Decision**

1. The appeal is admissible.
  
2. The application relates to highly moisturizing cosmetic formulations comprising ucuuba butter as active ingredient, wherein the ucuuba butter has a concentration of more than 70% of myristic acid, see paragraph [0001] of the published European application, EP 3 284 521 A1. These formulations present long-lasting skin hydration for at least 8 hours, see paragraph [0017]. According to claim 1 such an effect is obtained when the concentration of the ucuuba butter is between 1 and 5 % by weight of the formulation. The application contains test results showing that indeed a long lasting skin moisturizing effect is obtained when using formulations containing ucuuba butter in concentrations of 1, 2,5 and 5% per weight, see paragraphs [0096], [0128] and [0166], respectively.
  
3. The Examining Division refused the patent application for lack of inventive step under Article 56 EPC. The appellant disputed this finding. Inventive step will be assessed following the problem solution approach.
  
4. Closest prior art

4.1 It was undisputed in appeal proceedings that D2 is the document coming closest to the claimed use. D2 is a press article and describes the beneficial properties of ucuuba butter. It is stated that ucuuba butter helps skin to maintain its moisture, that it may be used for treating i. a. dry irritated skin and that it is thus useful in skin care products, e. g. creams.

4.2 It was likewise undisputed that D2 does not explicitly disclose the following features of the claim:

(i) the use for providing a moisturizing effect lasting at least 8 hours

(ii) the concentration of 1-5% per weight of ucuuba butter in the composition

(iii) the concentration of at least 70% per weight of myristic acid, based on the weight of ucuuba butter.

5. Objective technical problem and its solution

5.1 Using the compositions as defined in the claim leads to long-lasting skin hydration. The results of the tests in the description relate to the investigation of moisturizing effects of compositions containing 1%, 2.5% and 5% per weight of ucuuba butter. In spite of some discussion about the statistical significance of the results obtained in the test examples the Examining Division acknowledged in the appellant's favour that these tests show a long lasting moisturizing effect for all three compositions tested, and the Board agrees.

5.2 Thus, starting from D2 the technical problem to be solved can be formulated as to find compositions containing ucuuba butter that may be used for providing a long-lasting moisturizing effect. This problem is

solved by the compositions defined in the claim, which are characterized by features (i) to (iii) defined above. The formulation of the objective technical problem and its solution was likewise undisputed.

6. Obviousness of the solution

6.1 Starting from D2 the compositions defined in the claim are an obvious solution to the technical problem defined above, for the reasons set out below.

6.2 Regarding feature (i), i. e. the moisturizing effect lasting for more than 8 hours the Board agrees with the Examining Division that this feature cannot contribute to inventive step. Firstly, as highlighted by the Examining Division, D2 discloses the ucuuba butter compositions to be useful in the treatment of dry skin, implying a long-term moisturizing effect. Secondly, this feature is a consequence of the structural features of the composition to be used, i. e. the concentration ranges of the ucuuba butter in the composition and possibly the concentration of myristic acid in the ucuuba butter, rather than an independent feature itself. During oral proceedings the appellant agreed and did not argue inventive step based on this feature.

6.3 Regarding the content of myristic acid of 70% per weight of ucuuba butter the appellant argued that such a high content of myristic acid is not inherent to all ucuuba butters, and may not be present in D2. The appellant pointed to table 4 of D6 where a content of 68% is reported. It was also argued that D2 uses a different process to obtain the ucuuba butter than the present application, so the content in myristic acid

may differ. The high content of myristic acid was important, and in fact allowed to use the ucuuba butter in the relatively low levels defined in the claim.

It is correct that D2 is silent about the concentration of myristic acid in the ucuuba butter used there, apart from stating that the butter is "rich" in it. D3 reports a content of 75% (page 274), D1 reports 71.6% (table 1) and D6, to which the appellant points, reports 68.1%. The patent application reports myristic acid contents of 70.06, 75.2 and 69.46 % per weight of ucuuba butter, see table A.

As apparent from these disclosures the content of myristic acid in ucuuba butter is generally around 70% per weight. The patent application itself states that the type of extraction process is not important, see paragraph [0025] of the published application. Thus, small variations of this content are expected by a skilled person. Moreover, since it is known from D1-D3 that myristic acid is the active ingredient in ucuuba butter, a skilled person would tend to use an ucuuba butter with a high concentration of myristic acid, if available.

Thus, providing a composition in which the ucuuba butter has a content of myristic acid of 70% per weight of ucuuba butter does not go beyond a skilled person's routine activity.

6.4 Lastly, the Board concurs with the Examining Division that the selection of a suitable concentration for the ucuuba butter in a skin care composition to implement the teaching of D2 would have been a routine task for a skilled person.

The appellant argued that the choice of the concentration range is not arbitrary, but rather purposive. Although no comparative tests were on file it had been proven that below 1% per weight the results were unsatisfactory while it was surprising that 100% testers' satisfaction was achieved already at a concentration as low as 5% per weight ucuuba butter. It was referred to the results for TESTS 1 to 3 concerning compositions containing 1, 2.5 and 5 % per weight (see paragraphs [0096], [0128] and [0166] of the published application).

However, finding a suitable concentration of the active ingredient ucuuba butter does not involve more than routine experimentation. Even if a concentration range of 1-5% ucuuba butter in the skin care composition is the optimum range, as argued by the appellant, such a range could and would have been routinely found when implementing the teaching of D2. D2 states that ucuuba butter should be incorporated into skin care products such as body lotions or skin creams. A skilled person must choose a suitable concentration, and no inventive activity is needed in trying out different concentrations and assessing whether satisfactory results are achieved.

Moreover, skin care products having ucuuba butter as an ingredient in the claimed range are already available, see D1. Even if D1, as argued by the appellant, is about providing a matte effect on skin and does not disclose skin hydration, D1 shows that the concentrations chosen in the claimed compositions are usual concentrations for this ingredient and would provide a good starting point to test whether the skin hydrating effects disclosed in D2 may be achieved.

7. The Examining Division thus correctly refused the patent application under Article 97(2) EPC for lack of inventive step, Article 56 EPC.

## Order

### For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

A. Zellner

Decision electronically authenticated