Appeal decision

Appeal No. 2018-12216

Tokyo, Japan
Appellant Shiseido Company, Limited

Patent Attorney UCHIDA, Naoto

The case of appeal against the examiner's decision of refusal for Japanese Patent application No. 2016-188964, titled "HAIR CLEANSING AGENTS" [published on December 22, 2016, Japanese Unexamined Patent Application Publication No. 2016-216513] has resulted in the following appeal decision.

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures and the Invention

The present application was filed on September 28, 2016 as a divisional application under the provision of Article 44(1) of the Patent Act on the basis of Japanese Patent Application No. 2012-243034 filed on November 2, 2012. The summary of the subsequent procedure is set forth as below.

September 19, 2017: Notice of reason for refusal
January 17, 2018: Written Opinion
January 17, 2018: Written amendment
June 4, 2018: Decision of Rejection
September 11, 2018: Notice of Appeal
October 22, 2018: Written amendment (Formality)

The inventions according to Claims 1 to 4 of the present application are as per recited in Claims 1 to 4 of the scope of claims in the written amendment on January 17, 2018 as set forth below. (Hereinafter the inventions according to Claims 1 to 4 are referred to as "Invention 1" in the order of numbers attached to the claims. Further, they are collectively referred to as "the Invention" in some cases.)

"[Claim 1]

A hair cleansing agent comprising: (a) 0.1 to 0.5 mass% isostearyl alcohol; (b) diethyleneglycol laurate; and (c) 0.3 to 1 mass% cation-modified galactomannan, wherein a mass ratio [(b)/(a)] of (b) diethyleneglycol laurate to (a) isostearyl alcohol is in a range of 2 to 10.

[Claim 2]

The hair cleansing agent of Claim 1, wherein (c) cation-modified galactomannan is one kind or more selected from cationized locust bean gum, cationized tara gum, cationized guar gum, and cationized fenugreek gum.

[Claim 3]

A transparent composition for the use in hair cleansing agent, the composition comprising: (a) 0.1 to 0.5 mass% isostearyl alcohol; (b) diethyleneglycol laurate; and (c) 0.3 to 1 mass% cation-modified galactomannan, wherein a mass ratio [(b)/(a)] of (b) diethyleneglycol laurate to (a) isostearyl alcohol is in a range of 2 to 10.

[Claim 4]

The composition of Claim 3, wherein (c) cation-modified galactomannan is one kind or more selected from cationized locust bean gum, cationized tara gum, cationized guar gum, and cationized fenugreek gum."

No. 2 Reasons for refusal stated in the examiner's decision

The outline of the examiner's decision is set forth below.

(1) The present application goes beyond the scope of the matters described in the specification, the scope of claims, or drawings as of the filing of the original application, and does not conform to the requirements for division of the application, and thus does not have retroactive effects with respect to the filing date.

(2) The inventions according to Claims 1 and 4 are the inventions described in Japanese Unexamined Patent Application Publication No. 2014-91704, a publication that had been distributed before the filing, and thus correspond to Article 29(1)(iii) of the Patent Act and are not patentable.

(3) The inventions according to Claims 1 to 4 were easily conceivable by a person skilled in the art on the basis of the invention disclosed in a publication, and thus these inventions are unpatentable under the provision of Article 29(2) of the Patent Act.

No. 3 Judgment by the body

1. Determination of requirements for division (Article 44(1) of the Patent Act)

According to the description of the application of the present application, the present applicant aims to file an application as a patent application under the provision

of Article 44(1) of the Patent Act (so-called a divisional application), and thus a consideration is firstly given to whether or not the present application is a legitimately divided application.

(1) The division of application aims to file a new patent application for a part of a patent application including two or more inventions (Article 44(1), main paragraph of the Patent Act). Thus the following (requirement 1) and (requirement 3) should be satisfied to find that the division is properly made. Further, in view of the effects of the division of application that a divisional application is deemed to be filed as of the original application (Article 44(2), main paragraph of the Patent Act), the following (requirement 2) should be further satisfied.
(Reference: Examination Guidelines for Patent and Utility Model, Part VI, Chapter 1, Section 1, "2.2 Substantial requirement of the divisional of patent application")

(Requirement 1) all of the inventions stated in the description, etc., as they stand immediately prior to the division of the original application do not together constitute the invention claimed in the divisional application.
(Requirement 2) The matters stated in the description, etc., of the divisional application are within the scope of those stated in the description, etc., of the original application as they stood at the time of filing thereof.
(Requirement 3) The matters stated in the description, etc., of the divisional application are within the scope of those stated in the description, etc., of the original application as they stand immediately prior to the division thereof.

(2) In detail, a consideration is given first as to whether or not the present case conforms to (requirement 2).

A Description of the specification, the scope of claims, or drawing (hereinafter referred to as "the original application, etc.") as of the filing of the original application (Japanese Patent Application No. 2012-243034)

The originally attached description, etc. of the original application has the following descriptions:
(A) "[Claim 1]

A transparent hair cleansing agent comprising: (a) 0.1 to 0.5 mass% isostearyl alcohol; (b) diethyleneglycol laurate; and (c) 0.3 to 1 mass% cation-modified

galactomannan, wherein a mass ratio [(b)/(a)] of (b) diethyleneglycol laurate to (a) isostearyl alcohol is in a range of 2 to 10.

[Claim 2]

The transparent hair cleansing agent of Claim 1, wherein (c) cation-modified galactomannan is one kind or more selected from cationized locust bean gum, cationized tara gum, cationized guar gum, and cationized fenugreek gum."

(B) "[Technical field]

[0001]

The present invention relates to a transparent hair cleansing agent. In further detail, it relates to a transparent hair cleansing agent having excellent foaming property, foam quality, smoothness in rinsing, and free from damage, while maintaining transparency even in a low-temperature condition."

(C) "[Background Art]

[0002]

In hair cleansing agents such as shampoo, rich foaming when in use, creamy foam quality, smoothness in rinsing, no damage on hair after use, and the provision of wet feeling are essential quality properties, as is cleansing power.

[0003]

For such a hair cleansing agent with excellent feeling in use, for example, Patent Document 1 proposes a hair cleansing agent comprising: (a) 30 to 60 mass% of one kind or two kinds or more of surfactants selected from anionic surfactant, amphiphilic surfactant, and nonionic surfactant; (b) 3 to 10 mass% of ethyleneglycol long chain ester; and (c) 6 to 20 mass% of polyvalent alcohols. Patent Document 1 alleges that this hair cleansing agent has excellent foaming property, and can provide hairs with excellent moisture-retaining property, and furthermore, has excellent ability to enable hair to be combed with the fingers, smoothness, and bundling property of hairs.

Indeed, such conventional hair cleansing agents satisfy a certain feeling in use, but there is still a room for improvement on smoothness, etc.

[0004]

Further, in recent years, as customers' preferences vary, there is a growing need for transparent products. For example, Patent Document 2 describes a liquid cleanser composition comprising (A) polyglyceride fatty acid ester and (B) alkyleneoxide derivatives with a specific structure. The composition is allegedly mild, and has excellent feeling in use and transparent stability. Further, Patent Document 3

describes that an aqueous gel cleanser comprising 1) 10 to 25 mass% of POE-added sulfate-based anionic surfactant with an average added mole number of 5 or less in polyoxyethylene and 2) 8 to 20 mass% amphiphilic surfactant has high transparency, beauty, and good appearance.
[0005]

In general, however, a transparent cosmetic becomes unstable due to the effect of the other mixing components and temperature change, and tends to cause white turbidity due to the precipitation of a part of components. Therefore, transparency is lost in some cases as time goes by in a low temperature environment, in particular in cold areas."

(D) "[Problem to be solved by the invention]
[0007]

As described above, there is still a need for a transparent hair cleansing agent with excellent feeling in use as a hair cleansing agent without loss in transparency under a low-temperature environment."

(E) "[Means for solving the problem]
[0008]

The present inventors have intensively investigated to solve the above problem and eventually found that the feeling in use such as foaming, foam quality, smoothness in rinsing, and no damage as well as transparent stability in a low-temperature environment may be improved by mixing specific amounts of isostearyl alcohol, diethyleneglycol laurate, and cation-modified galactomannan with a transparent hair cleansing agent, and have completed the invention.
[0009]

Specifically, the present invention provides: a transparent hair cleansing agent comprising: (a) 0.1 to 0.5 mass% isostearyl alcohol; (b) diethyleneglycol laurate; and (c) 0.3 to 1 mass% cation-modified galactomannan, wherein a mass ratio [(b)/(a)] of (b) diethyleneglycol laurate to (a) isostearyl alcohol is in a range of 2 to 10."

(F) "[Advantage of the Invention]
[0010]

The present invention may improve feeling in use required for hair cleansing agent such as foaming in use, good foam quality, smooth combing with the fingers in rinsing, and no damage after use by mixing the above specific amounts of the above

components (a) to (c). Furthermore, a transparent appearance may be maintained for a long period even in a low-temperature condition (15℃). Therefore, it is particularly suitable for use in cold areas."

(G) "[0024]
<Other components>

A transparent hair cleansing agent of the Invention may include other components commonly used for cosmetics and pharmaceutical products, etc. to the quantitative and qualitative extent that does not compromise the effect of the Invention, according to its purpose. Such components may include, for example, anionic surfactants other than AMT-type surfactants, including alkyl ester sulfate, polyoxyethylene alkyl ether ester sulfate, and N-acylglutamate; amphiphilic surfactants such as alkylbetaine, alkylamidebetaine, and imidazolinium betaine; and nonionic surfactants such as fatty acid alkanol amines.

[0025]

Furthermore, it may contain oils such as hydrocarbon oils, ester oils, higher fatty acids, and silicone oils; moisturizing agents such as glyceride, propyleneglycol, 1,3-butylene glycol, and polyethyleneglycol; anti-dandruff agents such as trichlorocarbanide, sulfur, zinc pyrithione, and isopropylmethylphenol; thickeners; viscosity modifiers; opalizers; sequestering agents; UV absorbers; antioxidants; antiseptic agents; powder constituents; hair growing agents such as blood circulation promotors, local stimulants, hair follicle activator agents, anti-androgens, antiseborrheic agents, keratolytic drugs, antiseptic drugs, antiphlogistics, amino acids, vitamins, and crude drug extracts; pH adjusters; dyes; flavorants; and lower alcohols."

(H) "[0026]
<Transparent hair cleansing agent>

A transparent hair cleansing agent of the present invention may be produced in accordance with a dosage form to be selected and a method according to the form. Typically, it is produced by dissolving the above essential components and necessary optional components into water, etc. The form of products may include transparent hair shampoo and transparent rinse-in-shampoo."

(I) "[Examples]
[0027]

The present invention is explained hereinafter in further details with reference to examples, but the present invention is not restricted by these examples. A mixing amount shows mass%, unless otherwise specified.

[0028]

<Assessment method>

Hair cleanser compositions (samples) with prescriptions shown in the following Tables 1 to 5 were prepared by dissolving and mixing components into ion exchange water and assessed by the following method.

[0029]

<Assessment of feeling in use>

Each sample prepared was actually used by 10 special panel members, and rich foaming in use, fine foam quality (creaminess), smoothness in rinsing (smooth combing with the fingers), and no damage on hair after use were scored in accordance with the following criteria. Subsequently, average score was calculated for each sample, and assessed by the following four-point scale.

(Evaluation criteria)

Score 5: Good

Score 4: Somewhat better

Score 3: Ordinary

Score 2: Somewhat poor

Score 1: Poor

(Assessment)

◎: Average score is 4.5 or more

○: Average score is 3.5 or more to less than 4.5

△: Average score is 2.5 or more to less than 3.5

×: Average score is less than 2.5

[0030]

<Low-temperature stability assessment>

Each sample prepared was stored for one month at 15°C, and the appearance was observed to assess transparency. An assessment was made by the following criteria:

(Assessment)

◎: Transparent

○: Slight turbidity was observed, but almost transparent

△: Some turbidity was observed

×: White turbid

[0031]

1. Consideration of a mixing amount of isostearyl alcohol (component a) and a mass ratio of diethyleneglycol laurate (component b) to component a

A sample with a prescription shown in Table 1 was prepared, and a mixing amount of component a and a mass ratio of component b to component a [(b)/(a)] were considered. The results are shown in Table 1.

[0032]

[Table 1]

	1	2	3	4	5	6	7	8	9	10
イオン交換水	残余	残余	残余	残余	残余	残余	残余	残余	残余	残余
ポリオキシエチレンラウリルエーテル硫酸ナトリウム(2E. O.)	11	11	11	11	11	11	11	11	11	11
ヤシ油脂肪酸アミドプロピルベタイン	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
ジプロピレングリコール	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
(b)ラウリン酸ジエチレングリコール	1	1	1	1	1	1	1	1	1	1
(a)イソステアリルアルコール	-	-	0.05	0.1	0.2	0.5	1	2	4	8
カチオン化グアーガム	-	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
塩化ナトリウム	1	1	1	1	1	1	1	1	1	1
安息香酸Na	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
クエン酸	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
(b)／(a)質量比	-	-	20	10	5	2	1	0.5	0.25	0.125
泡立ち	○	○	○	◎	◎	◎	○	△	×	×
泡質	△	△	△	○	◎	◎	○	△	×	×
すすぎ時の滑らかさ	×	△	△	○	◎	◎	○	△	△	△
ごわつき	×	△	△	○	◎	○	△	△	△	×

イオン交換水　Ion exchange water

ポリオキシエチレンラウリルエーテル硫酸ナトリウム（２Ｅ．Ｏ）　Polyoxyethylene lauryl ether sodium sulfate (2E.O)

ヤシ油脂肪酸アミドプロピルベタイン　Coconut oil fatty acid amidopropyl betaine

ジプロピレングリコール Dipropylene glycol

（ｂ）ラウリン酸ジエチレングリコール　(b) Diethyleneglycol laurate

（ａ）イソステアリルアルコール (a) isostearyl alcohol

カチオン化グアーガム　Cationized guar gum

塩化ナトリウム Sodium chloride

安息香酸Ｎａ　Sodium benzoate

クエン酸　Citric acid

（ｂ）／（ａ）質量比　(b)/(a) mass ratio

泡立ち　Foaming property

泡質　Foam quality

すすぎ時の滑らかさ　Smoothness in rinsing

ごわつき　Damage

残余　Balance

[0033]

As shown in Table 1, in the absence of isostearyl alcohol (component a) and cationized guar gum (component c), even if diethyleneglycol laurate (component b) should be included, the smoothness in rinsing and the damage had poor scores, and the foam quality was not satisfactory (sample 1). Further, the additional mixing of component c to this made these scores more or less improved, however, the score still remained unsatisfactory (sample 2). In contrast, in a case where a mass ratio [(b)/(a)] of component b to component a falls within a range of 2 to 10 and all the components a to c are included, it had an excellent score for all the assessment items (samples 4 to 6). However, if the mass ratio of component b to component a was outside of said range, an excellent result was not achieved for any of these assessment items (samples 3, 7 to 10).

[0034]

2. Consideration of mixing amount of cation-modified galactomannan (component c)

A sample with a prescription shown in Table 2 was prepared, and a mixing amount of component c was considered. The results are shown in Table 2.

[0035]

[Table 2]

	11	12	13	14	15	16
イオン交換水	残余	残余	残余	残余	残余	残余
ポリオキシエチレンラウリルエーテル硫酸ナトリウム(2E. O.)	11	11	11	11	11	11
ヤシ油脂肪酸アミドプロピルベタイン	2.5	2.5	2.5	2.5	2.5	2.5
ジプロピレングリコール	0.5	0.5	0.5	0.5	0.5	0.5
(b)ラウリン酸ジエチレングリコール	1	1	1	1	1	1
(a)イソステアリルアルコール	0.5	0.5	0.5	0.5	0.5	0.5
カチオン化グアーガム	-	0.1	0.3	0.5	1	1.5
塩化ナトリウム	1	1	1	1	1	1
安息香酸Na	0.3	0.3	0.3	0.3	0.3	0.3
クエン酸	0.2	0.2	0.2	0.2	0.2	0.2
(b)／(a)質量比	2	2	2	2	2	2
泡立ち	○	○	◎	◎	◎	◎
泡質	△	○	◎	◎	◎	◎
すすぎ時の滑らかさ	×	△	○	◎	◎	○
ごわつき	×	△	◎	○	○	△

イオン交換水　Ion exchange water

ポリオキシエチレンラウリルエーテル硫酸ナトリウム（２Ｅ．Ｏ）　Polyoxyethylene lauryl ether sodium sulfate (2E.O)

ヤシ油脂肪酸アミドプロピルベタイン　Coconut oil fatty acid amidopropyl betaine

ジプロピレングリコール Dipropylene glycol

（ｂ）ラウリン酸ジエチレングリコール　(b) Diethyleneglycol laurate
（ａ）イソステアリルアルコール (a) isostearyl alcohol
カチオン化グアーガム　Cationized guar gum
塩化ナトリウム　Sodium chloride
安息香酸Ｎａ　Sodium benzoate
クエン酸　Citric acid
（ｂ）／（ａ）質量比　(b)/(a) mass ratio
泡立ち　Foaming property
泡質　Foam quality
すすぎ時の滑らかさ　Smoothness in rinsing
ごわつき　Damage
残余　Balance

[0036]

As shown in Table 2, excellent assessment results were shown for all the assessment items in a case where a cationized guar gum, an example of cation-modified galactomannan (component c), is contained in a range of 0.3 to 1 mass% on a total weight basis of samples (samples 13 to 15). In a case where a mixing amount of component c is outside of said range, however, smoothness in rinsing and damage deteriorated (samples 11, 12, 16).

[0037]

3. Comparison between cation-modified galactomannan (component c) and other cation polymers

A sample with a prescription shown in Table 3 was prepared to compare the effect of mixing cation-modified galactomannan with the effect of mixing a cation polymer. The results are shown in Table 3.

[0038]

[Table 3]

	17	18	19	20
イオン交換水	残余	残余	残余	残余
ポリオキシエチレンラウリルエーテル硫酸ナトリウム(2E. O.)	11	11	11	11
ヤシ油脂肪酸アミドプロピルベタイン	2.5	2.5	2.5	2.5
ジプロピレングリコール	0.5	0.5	0.5	0.5
(b)ラウリン酸ジエチレングリコール	1	1	1	1
(a)イソステアリルアルコール	0.5	0.5	0.5	0.5
カチオン化グアーガム	0.5	–	–	–
カチオン化ローカストビーンガム	–	0.5	–	–
カチオン化セルロース	–	–	0.5	–
ポリクオタニウム－7	–	–	–	0.5
塩化ナトリウム	1	1	1	1
安息香酸Na	0.3	0.3	0.3	0.3
クエン酸	0.2	0.2	0.2	0.2
(b)／(a)質量比	2	2	2	2
泡立ち	◎	◎	○	◎
泡質	◎	◎	○	◎
すすぎ時の滑らかさ	◎	◎	◎	○
ごわつき	○	○	△	△

イオン交換水　Ion exchange water
ポリオキシエチレンラウリルエーテル硫酸ナトリウム（２Ｅ．Ｏ）
Polyoxyethylene lauryl ether sodium sulfate (2E.O)
ヤシ油脂肪酸アミドプロピルベタイン　Coconut oil fatty acid amidopropyl betaine
ジプロピレングリコール Dipropylene glycol
（ｂ）ラウリン酸ジエチレングリコール　(b) Diethyleneglycol laurate
（ａ）イソステアリルアルコール (a) isostearyl alcohol
カチオン化グアーガム　Cationized guar gum
カチオン化ローカストビーンガム Cationized Locust Bean Gum
カチオン化セルロース　Cationized cellulose
ポリクオタニウムー７　Polyquaternium-7
塩化ナトリウム Sodium chloride
安息香酸Ｎａ　Sodium benzoate
クエン酸　Citric acid
（ｂ）／（ａ）質量比　(b)/(a) mass ratio
泡立ち Foaming property
泡質　Foam quality
すすぎ時の滑らかさ　Smoothness in rinsing
ごわつき　Damage
残余 Balance

[0039]

As shown in Table 3, in a case of mixing cation-modified galactomannan (component c) of cationized guar gum or cationized Locust Bean Gum, higher scores were achieved for all the assessment items compared to the case of mixing a cation polymer lacking a galactomannan skeleton of cationized cellulose or polyquaternium-7.

[0040]

4. Comparison between isostearyl alcohol (component a) and other higher alcohols

A sample with a prescription shown in Table 4 was prepared to compare the mixing effect of isostearyl alcohol (component a) with the effect of mixing higher alcohols. The results are shown in Table 4.

[0041]

[Table 4]

	21	22	23
イオン交換水	残余	残余	残余
ポリオキシエチレンラウリルエーテル硫酸ナトリウム(2E. O.)	11	11	11
ヤシ油脂肪酸アミドプロピルベタイン	2.5	2.5	2.5
ジプロピレングリコール	0.5	0.5	0.5
(b)ラウリン酸ジエチレングリコール	1	1	1
(a)イソステアリルアルコール	0.5	–	–
セタノール	–	0.5	–
ステアリルアルコール	–	–	0.5
カチオン化グアーガム	0.5	0.5	0.5
塩化ナトリウム	1	1	1
安息香酸Na	0.3	0.3	0.3
クエン酸	0.2	0.2	0.2
(b)／(a)質量比	2	–	–
泡立ち	◎	◎	◎
泡質	◎	◎	◎
すすぎ時の滑らかさ	◎	◎	◎
ごわつき	○	○	○
低温安定性	◎	×	×

イオン交換水　Ion exchange water

ポリオキシエチレンラウリルエーテル硫酸ナトリウム（２Ｅ．Ｏ）　Polyoxyethylene lauryl ether sodium sulfate (2E.O)

ヤシ油脂肪酸アミドプロピルベタイン　Coconut oil fatty acid amidopropyl betaine

ジプロピレングリコール Dipropylene glycol

（ｂ）ラウリン酸ジエチレングリコール　(b) Diethyleneglycol laurate

（ａ）イソステアリルアルコール (a) isostearyl alcohol

セタノール　Cetanol

ステアリルアルコール　Stearyl alcohols

カチオン化グアーガム　Cationized guar gum

塩化ナトリウム Sodium chloride

安息香酸Ｎａ　Sodium benzoate

クエン酸　　Citric acid
（ｂ）／（ａ）質量比　(b)/(a) mass ratio
泡立ち　Foaming property
泡質　Foam quality
すすぎ時の滑らかさ　　Smoothness in rinsing
ごわつき　　Damage
低温安定性　　Low temperature stability
残余　Balance

[0042]

As shown in Table 4, in a case of mixing isostearyl alcohol (component a), transparency was maintained for one-month storage in a low temperature environment (15°C). In a case of mixing the other higher alcohols of cetanol or isostearyl alcohol, low temperature stability was poor, and white turbidity was observed.

[0043]

5. Comparison between diethyleneglycol laurate (component b) and other glycol laurates

A sample with a prescription shown in Table 5 was prepared to compare the mixing effect of diethyleneglycol laurate (component b) with the effect of mixing glycol laurate. The results are shown in Table 5.

[0044]

[Table 5]

	24	25
イオン交換水	残余	残余
ポリオキシエチレンラウリルエーテル硫酸ナトリウム（2E. O. ）	11	11
ヤシ油脂肪酸アミドプロピルベタイン	2.5	2.5
ジプロピレングリコール	0.5	0.5
(b)ラウリン酸ジエチレングリコール	1	–
ラウリン酸プロピレングリコール	–	1
(a)イソステアリルアルコール	0.5	0.5
カチオン化グアーガム	0.5	0.5
塩化ナトリウム	1	1
安息香酸Na	0.3	0.3
クエン酸	0.2	0.2
(b)／(a)質量比	2	–
泡立ち	◎	△
泡質	◎	○
すすぎ時の滑らかさ	◎	◎
ごわつき	○	○

イオン交換水　　Ion exchange water

ポリオキシエチレンラウリルエーテル硫酸ナトリウム（２Ｅ．Ｏ）
Polyoxyethylene lauryl ether sodium sulfate (2E.O)
ヤシ油脂肪酸アミドプロピルベタイン　Coconut oil fatty acid amidopropyl betaine
ジプロピレングリコール Dipropylene glycol
（ｂ）ラウリン酸ジエチレングリコール　(b) Diethyleneglycol laurate
ラウリン酸プロピレングリコール Propylene glycol laurate
（ａ）イソステアリルアルコール (a) isostearyl alcohol
カチオン化グアーガム　Cationized guar gum
塩化ナトリウム　Sodium chloride
安息香酸Ｎａ　Sodium benzoate
クエン酸　Citric acid
（ｂ）／（ａ）質量比　(b)/(a) mass ratio
泡立ち　Foaming property
泡質　Foam quality
すすぎ時の滑らかさ　Smoothness in rinsing
ごわつき　Damage
残余　Balance

[0045]
As shown in Table 5, it was confirmed that foaming and foam quality deteriorate by mixing propylene glycol laurate in place of diethyleneglycol laurate (component b)."

B　Judgment
(A) Inventions 1 and 2 describe "hair cleansing agent". This "hair cleansing agent" encompasses opaque ones since it is not particularly specified as "transparent".
Inventions 3 and 4 describe "hair cleansing agent". This "hair cleansing agent" also encompasses opaque ones since it is not particularly specified as "transparent".

(B) Therefore, a consideration is given to whether or not an opaque hair cleansing agent comprising (a) isostearyl alcohol, (b) diethyleneglycol laurate, and (c) cation-modified galactomannan in prescribed proportions are within the scope of those stated in the originally attached description, etc. of the original application.
First, the originally attached description, etc. of the original application describes in paragraph [0001] that describes the technical field of the invention that "The present

invention relates to a transparent hair cleansing agent. In further detail, it relates to a transparent hair cleansing agent having excellent foaming property, foam quality, smoothness in rinsing, and free from damage, while maintaining transparency even in a low-temperature condition." It is described as relating to a technical field of transparent hair cleansing agent.

Subsequently, the originally attached description, etc. of the original application describes in paragraph [0007] that describes a problem to be solved by the invention that "there is still a need for a transparent hair cleansing agent with excellent feeling in use as a hair cleansing agent without loss in transparency under a low-temperature environment." Thus the problem to be solved by the invention is the provision of a "transparent hair cleansing agent" "without losing transparency even in a low-temperature environment" as well as with "excellent feeling in use".

Further, the originally attached description, etc. of the original application describes in paragraph [0008] that describes a means for solving the problem that "The present inventors have intensively investigated to solve the above problem and finally found that the feeling in use such as foaming, foam quality, smoothness in rinsing, and no damage as well as transparent stability in a low-temperature environment may be improved by mixing specific amounts of isostearyl alcohol, diethyleneglycol laurate, and cation-modified galactomannan with a transparent hair cleansing agent, and have completed the invention." It is described as a means for solving the problem that the use of matters specifying the invention in which isostearyl alcohol, diethyleneglycol laurate, and cation-modified galactomannan, are mixed in specific amounts results in improvement in both feeling in use and transparency stability in a low-temperature environment.

Furthermore, in the originally attached description, etc. of the original application, paragraph [0010] describes the effect of the invention that "The present invention may improve feeling in use required for hair cleansing agents such as foaming in use, good foam quality, smooth combing with the fingers in rinsing, and damage after use by mixing the above specific amounts of the above components (a) to (c). Furthermore, a transparent appearance may be maintained for a long period even in a low-temperature condition (15°C). Therefore, it is particularly suitable for use in cold areas." As the effect of the invention, it is described that the feeling in use may be improved, and the transparency of appearance in a low temperature condition may be maintained.

In addition, the originally attached description, etc. of the original application describes in Example 4 (paragraphs [0040] and [0042], and Table 4) that as a result of

comparing isostearyl alcohol of component (a) and the other higher alcohols, transparency may be maintained when stored for one month in a low-temperature environment, but in a case of mixing the other higher alcohols, low temperature stability was poor and white turbidity was observed. It can be seen from this description that isostearyl alcohol of the component (a) is a component that contributes to the maintenance of transparency even in a low temperature environment. Furthermore, in the other Tables 1 to 3 and 5, a sample including component (a) was prepared.

As seen above, the whole disclosure of the originally attached description, etc. of the original application is based on a premise that a hair cleansing agent comprising (a) isostearyl alcohol, (b) diethyleneglycol laurate, and (c) cation-modified galactomannan in prescribed proportions is transparent. It cannot be said that opaque ones are described in the originally attached description, etc. of the original application.

Therefore, it is recognized that Claims 1 to 4 of the present application, which is a divisional application, introduce new technical matter that is not described in the originally attached description, etc. of the original application that describes hair cleansing agent including opaque ones. Thus it cannot be said that the matters described in the specification, etc. of the divisional application are within the scope of those stated in the originally attached description, etc. of the original application, nor is the above (requirement 2) satisfied.

Further, the specification, the scope of claims, and drawings right before the division of original application are identical to the specification, the scope of claims, and drawings as of the filing of the original application. Thus, for a reason similar to the above consideration, it cannot be said that Claims 1 to 4 of the present application are within the scope of those stated in the specification, etc. just before the division of the original application, nor is the above (requirement 3) satisfied.

Therefore, the present application is not a legitimately divided application without considering the above (requirement 1).

(C) Appellant's allegation

a Appellant alleges as below:

(i) In the originally attached description, etc. of the original application, the language of "hair cleanser (composition) (without a limitation of being transparent)" is described in paragraphs [0002] and [0003] that explain "Background Art", paragraph [0007] regarding a problem, paragraph [0010] regarding the effects, and paragraph [0028] regarding the examples. An amendment to describe "hair cleansing agent" in the present invention does not correspond to the incorporation of new matter.

(ii) "Transparent hair cleansing agent" of Claims 1 and 2 of the Patent of the original application is replaced with a higher concept of "hair cleansing agent" in Inventions 1 and 2. In the examination guidelines, it is stated "For example, in a case where it is obvious from the description of the originally attached description, etc. that a matter to be deleted is not relevant to the solution to the problem by the invention, but an optional additional matter, it is often the case that such amendment does not incorporate any new technical significance". Further, the invention described in the originally attached description, etc. of the original application has the problem to be solved by the invention of (A) improved feeling in use, and (B) improved low temperature stability to maintain transparency even in a low temperature condition. The improvement on feeling in use of problem (A) is not limited to a transparent hair cleansing agent, but is applicable to all hair cleansing agents. Regarding problem (B), what is assessed in the examples of the specification of the present application is not "whether or not a cleanser itself is transparent", but "low temperature stability (presence or absence of precipitation in a low temperature)" using a barometer of "transparency". Thus, inherent transparency of the cleanser itself is an optional additional matter that has nothing to do with the solution to said problem, and the amendment to delete "transparent" does not incorporate any new technical significance, and thus does not correspond to an amendment to incorporate new matter.

b A consideration is given to the Appellant's allegation.

Regarding (i)

Paragraphs [0002] and [0003] in the originally attached description, etc. of the original application describes background art, and does not describe the invention according to the scope of claims of the original application; i.e., a hair cleansing agent comprising (a) isostearyl alcohol, (b) diethyleneglycol laurate, and (c) cation-modified galactomannan in prescribed proportions.

Further, paragraph [0007] describes a problem to be solved by the invention according to the scope of claims of the original application that "there is still a need for a transparent hair cleansing agent with excellent feeling in use as a hair cleansing agent and without losing transparency under a low-temperature environment." The problem to be solved by the invention is the provision of "transparent hair cleansing agent" "without losing transparency even in a low-temperature environment" as well as with "excellent feeling in use". Thus it cannot be seen that hair cleansing agents which do

not require transparency are described by focusing the description on the problem of feeling in use.

Further, paragraph [0010] describes the effect of the invention that "The present invention may improve feeling in use required for hair cleansing agents such as foaming in use, good foam quality, smooth combing with the fingers in rinsing, and no damage after use by mixing the above specific amounts of the above components (a) to (c). Furthermore, a transparent appearance may be maintained for a long period even in a low-temperature condition (15°C). Therefore, it is particularly suitable for the use in cold areas." Regarding the improvement in the feeling in use, the language of "hair cleansing agent" is used. The effect of the invention lies in that the transparency of appearance in a low temperature condition may be maintained, along with the improved feeling in use. Thus it cannot be seen only from the description of the effects of the feeling in use that hair cleansing agents which do not require transparency are described.

Paragraph [0028] describes that "hair cleanser compositions (samples) with a prescription shown in the following Tables 1 to 5 were prepared by dissolving and mixing components into an ion exchange water and assessed by the following method." Hair cleanser compositions prepared in Tables 1 to 5 all include isostearyl alcohol of component (a), for which contribution to the retention of transparency even in Example 4 was demonstrated. Thus a person skilled in the art who saw these tables would recognize that "hair cleanser composition" of the paragraph [0028] was a "transparent hair cleansing agent".

Regarding (ii)

Appellant alleges that the problem of the improved feeling in use is not limited to a transparent hair cleansing agent, but is applicable to all hair cleansing agents; however, paragraph [0007] of the original application describes that "there is still a need for a transparent hair cleansing agent with excellent feeling in use as a hair cleansing agent without losing transparency even in a low-temperature environment." Thus the problem to be solved by the invention is the provision of a "transparent hair cleansing agent" "without losing transparency even in a low-temperature environment" as well as providing "excellent feeling in use". Thus it cannot be seen that all the hair cleansing agents which do not require transparency are described by focusing only on the problem of feeling in use.

Appellant alleges that the problem of "without losing transparency even in a low-temperature environment" should be construed as meaning the problem of improvement of low temperature stability, and the fact that the cleanser itself is inherently transparent

is not directly irrelevant to the solution to the problem; however, as described in paragraph [0007], the problem to be solved by the invention according to the scope of claims of the original application is nothing but the provision of "a transparent hair cleansing agent without losing transparency even in a low-temperature environment". Since the problem is "without losing transparency", the transparency of cleanser itself is a prerequisite in solving the problem.

Further, the provision of transparent hair cleansing agent is a problem to be solved by the invention. Thus it cannot be said that the matter of "transparency" in "transparent hair cleansing agent" is an optional additional matter that is irrelevant to the solution to the problem to be solved by the invention.

Therefore, it is the incorporation of new matter to replace "transparent hair cleansing agent" of Claims 1 and 2 of the Patent of the original application with "hair cleansing agent" of Claims 1 and 2 in the divisional application, and thus it cannot be said that Present Inventions 1 and 2 fall within a scope of matters described in the originally attached description, etc. of the original application.

Therefore, none of the Appellant's allegations of the above (i) and (ii) is acceptable.

(3) Summary

As described above, the present application is not a legitimately divided application, and thus the provision of Article 44(2), main paragraph of the Patent Act shall not apply to the present application.

Therefore, the filing date of the present application is the actual filing date of September 28, 2016.

2. Determination of novelty (Article 29(1)(iii) of the Patent Act)

(1) Cited Document 1

As described above, the filing date of the present application is September 28, 2016. Japanese Unexamined Patent Application Publication No. 2014-91704, which is a publication distributed before the filing of the present application, cited as Cited Document 1 in the reasons for refusal stated in the examiner's decision, is a publication of the original application according to the divisional application of the present application. The publication describes the matter pointed out in the above 1.(2)A.

Further, it is recognized from Claim 1 of the above described matter (A) that Cited Document 1 describes the following inventions.
"A transparent hair cleansing agent comprising: (a) 0.1 to 0.5 mass% isostearyl alcohol; (b) diethyleneglycol laurate; and (c) 0.3 to 1 mass% cation-modified galactomannan, wherein a mass ratio [(b)/(a)] of (b) diethyleneglycol laurate to (a) isostearyl alcohol is in a range of 2 to 10" (Hereinafter referred to as "Cited Invention 1".)

Further, it is recognized from Claim 2 of the above described matter (A) that Cited Document 1 describes the following inventions.
"A hair cleansing agent comprising: (a) 0.1 to 0.5 mass% isostearyl alcohol; (b) diethyleneglycol laurate; and (c) 0.3 to 1 mass% cation-modified galactomannan, wherein a mass ratio [(b)/(a)] of (b) diethyleneglycol laurate to (a) isostearyl alcohol is in a range of 2 to 10, wherein (c) cation-modified galactomannan is one kind or more selected from cationized locust bean gum, cationized tara gum, cationized guar gum, and cationized fenugreek gum." (Hereinafter referred to as "Cited Invention 2".)

(2) Comparison / Judgment
A Comparing Invention 1 and Cited Invention 1, the "transparent hair cleansing agent" of Cited Invention 1 is encompassed into "hair cleansing agent" of Invention 1. Thus there is no difference between them.

Therefore, Invention 1 is identical to the invention described in Cited Document 1.

B Comparing Invention 2 and Cited Invention 2, "transparent hair cleansing agent" of Cited Invention 2 is encompassed into "hair cleansing agent" of Invention 2. Thus there is no difference between them.

Therefore, Invention 2 is identical to the invention described in Cited Document 1.

No. 4 Closing

As seen above, the inventions according to Claims 1 and 2 of the present application are the inventions described in Cited Document 1, and correspond to Article 29(1)(iii) of the Patent Act, and thus are not patentable. Thus the present application should be rejected without the need for making a determination about the other remaining claims. The present application should be rejected.

Therefore, the appeal decision shall be made as described in the conclusion.

July 17, 2019

Chief administrative judge: SEKI, Masatatsu
Administrative judge: TOMINAGA, Midori
Administrative judge: YOSHIDA, Tomomi