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**D E C I S I O N**  
**of 22 October 2004**

**Case Number:** T 0285/00 - 3.3.6

**Application Number:** 94903842.6

**Publication Number:** 0678119

**IPC:** C11D 17/06

**Language of the proceedings:** EN

**Title of invention:**

Detergent composition and process for producing it

**Patentee:**

UNILEVER PLC, et al

**Opponent:**

The Procter & Gamble Company

**Headword:**

Dissolution aid/UNILEVER

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

"Admissibility of a disclaimer (no): disclaimer largely not based on disclosure of prior art document cited under Article 54(3) EPC and thereby providing more distance of the remaining claimed subject-matter from relevant prior art document cited under Article 54(2) EPC"

**Decisions cited:**

G 0001/03, T 1146/98, T 0934/97, T 0608/96, T 0863/96,  
G 0001/93

**Catchword:**

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Case Number: T 0285/00 - 3.3.6

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.6**  
**of 22 October 2004**

**Appellants:**  
(Proprietors of the  
patent)

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and

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**Respondent:**  
(Opponent)

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**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
26 January 2000 concerning maintenance of  
European patent No. 0678119 in amended form.**

**Composition of the Board:**

**Chairman:** P. Krasa  
**Members:** L. Li Voti  
U. J. Tronser

## Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division concerning the maintenance in amended form of the European patent no. 0678 119, relating to a detergent composition and a method of fabric washing.

II. The patent in suit was granted with a set of 9 claims, claim 1 of which read as follows:

"1. A particulate detergent composition having a bulk density of at least 600 g/l and comprising a surfactant system including one or more anionic and/or nonionic surfactants, at least one detergency builder and a dissolution aid, wherein the surfactant system is present in an amount of from 10 to 50% by weight on the composition, the dissolution aid is present in an amount from 0.05 to 1% by weight as calculated on the composition and comprises a nonionic material which is an alkoxyated aliphatic alcohol containing at least 25 alkylene oxide groups and **the ratio by weight of nonionic surfactant to dissolution aid is greater than 10:1.**"

III. In its notice of opposition the Opponent sought revocation of the patent on the grounds of Article 100(a) EPC, in particular because of lack of novelty of the claimed subject-matter.

The objection of lack of novelty was based during the written proceedings *inter alia* on the following documents:

(1): WO-A-92/18594

(6): WO-A-93/02176

(7): US-A-4876023.

The admissibility under Article 123(2) EPC of the limitation of claim 1 to compositions having a **ratio by weight of nonionic surfactant to dissolution aid of greater than 10:1** was contested by the Opponent during the oral proceedings at first instance.

In the Opponent's view this limitation, already contained in the claims as granted, did not find support in the original application documents of the patent in suit and amounted to an inadmissible disclaimer over the disclosure of the not prepublished document (6), which was prior art by virtue of Article 54(3) EPC.

IV. In its decision, the Opposition Division found *inter alia* that

- the respective claims 1 according to the then pending main and first auxiliary requests lacked novelty, e.g. in the light of documents (1) or (7);
- claim 1 according to the second auxiliary request containing the provisos that the used particulate detergent composition had **a ratio by weight of nonionic surfactant to dissolution aid greater than 10:1 and did not contain specific alkylglycosides**, i.e. containing a disclaimer

differently worded from that of the granted claims, complied with the requirements of the EPC.

V. An appeal was filed against this decision by the Patent Proprietors (Appellants).

The Appellants filed during the written proceedings three new sets of amended claims to be considered as the main request and the first and second auxiliary requests, respectively.

Each of the respective independent claims 1 according to these requests **do not exclude the presence of specific alkylpolyglycosides** but contain the proviso, already contained in the granted claims, that **the ratio by weight of nonionic surfactant to dissolution aid in the particulate detergent composition has to be greater than 10:1.**

All these requests contain dependent claims 2 to 6, relating to specific embodiments of the respectively claimed method, use or composition.

Oral proceedings were held before the Board on 22 October 2004.

VI. The Appellants submitted in writing and orally *inter alia* that

- the limiting feature regarding the ratio by weight of nonionic surfactant to dissolution aid was already contained in the claims as granted and limited in an admissible way the claimed subject-

matter over the teaching of the not prepublished document (6).

VII. The Respondent (Opponent) submitted *inter alia* that

- the disclaimer which was already contained in the claims as granted contravened the requirements of Article 123(2) EPC since it did not precisely reflected the teaching of document (6) against which it should limit the claimed subject-matter; furthermore, the introduction of such a disclaimer provided an unwarranted advantage to the Appellants since it further limited the claimed subject-matter vis-à-vis the relevant prior art cited under Article 54(2) EPC.

VIII. The Appellants request that the appealed decision be set aside and that the patent be maintained on the basis of any of the main or of the first or second auxiliary requests, all of them filed under cover of a letter dated 17 September 2004.

The Respondent requests that the appeal be dismissed.

## **Reasons for the Decision**

1. *Main Request*

1.1 Article 123(2) EPC

1.1.1 Claim 1 according to the main request contains a limitation regarding the use in the claimed method of

compositions wherein **the weight ratio of the nonionic surfactant to the dissolution aid is greater than 10:1.**

As admitted by the Appellants, this feature, which was already contained in product claim 1 as granted, is not supported by the original documents of the application from which the appealed patent was granted.

However, this technical feature should be considered in the Appellants' view as an admissible disclaimer over the disclosure of the not prepublished document (6) cited against the novelty of the claimed subject-matter in virtue of Article 54(3) EPC. Therefore, claim 1 would comply in the Appellants' view with the requirements of Article 123(2) EPC.

The Board is aware that this so-called disclaimer contains positive instead of negative technical features as it would be preferable for the sake of transparency (see G 1/03, OJ EPO 2004, 413, point 3 of the reasons for the decision). This point, however, not being decisive under the circumstances of this case, does not need further consideration.

- 1.1.2 It is the established jurisprudence of the Boards of Appeal of the EPO that the introduction into a claim of a disclaimer not finding support in the original documents of an application or a patent can be admissible in order to delimit the claimed subject-matter with regard to a not prepublished document cited under Article 54(3) EPC (see G 1/03, point 2.1.3 of the reasons for the decision).

However, such a disclaimer should be based on the teaching of the document in question and should not remove more than is necessary to restore novelty (see T 1146/98, point 2.4 of the reasons for the decision and T 934/97, point 2.3 of the reasons for the decision, both of them unpublished in the OJ EPO, as well as G 1/03, point 3 of the reasons for the decision).

Furthermore, the disclaimer should not modify the technical teaching of the claimed invention in such a way as to provide an unwarranted advantage to the Applicant or Patent Proprietor, e.g. by rendering the claimed invention novel or inventive over prior art cited under Article 54(2) EPC and which cannot be considered to represent an accidental anticipation (see T 608/96, point 6 of the reasons for the decision and T 863/96, point 3.2 of the reasons for the decision, both of them unpublished in the OJ EPO, as well as G 1/93, OJ EPO 1994, 541, point 9 of the reasons for the decision and G 1/03, point 2.6.2 of the reasons for the decision).

The questions to be replied in the present case are thus

- (a) whether the questioned disclaimer closely reflects the teaching of document (6) and merely excludes protection for the part of the claimed subject-matter also disclosed in document (6) and
- (b) if the introduction of such a disclaimer is admissible with regard to the other relevant prior art cited under Article 54(2) EPC, e.g. documents (1) or (7).



1.1.3 Document (6) relates to a process for the preparation of a particulate detergent composition wherein liquid nonionics are first intimately mixed with a so-called "Strukturbrecher", which can be considered to be a dissolution aid in accordance with the patent in suit, at a weight ratio of from 10:1 to 1:2. This mixture is then added in various ways to other components of the detergent composition in order to obtain the final product (see claims 1, 17 and 18 as well as the last paragraph on page 2 and page 6, lines 15 to 17).

The preparation of such an intimate mixture is essential for obtaining the result desired in document (6), i.e. a better solubility of the final product (page 1, lines 1 to 4 and page 2, lines 20 to 24).

The disclaimer in question excludes instead all possible mixtures of any possible nonionic surfactant, be it liquid or solid, with a dissolution aid having a weight ratio of nonionic surfactant to dissolution aid of 10:1 or lower in the final product, i.e. also mixtures with a weight ratio lower than the lower limit of document (6), independently from the way the mixture has been prepared.

Therefore it excludes also mixtures prepared in a very different way as well as combinations of solid and/or liquid nonionics and dissolution aids not disclosed in document (6). Therefore, the disclaimer excludes a large number of compositions which are not disclosed in document (6).

1.1.4 Document (7) is one of the prepublished documents disclosing state of the art according to Article 54(2) EPC cited by the Respondent against the novelty of the claimed subject-matter. This document cannot be considered to represent an accidental anticipation since it deals with fabric washing detergent powders of high bulk density which disperse and dissolve quickly in water without leaving residues in its dispensing means, i.e. with the same technical field of application as does the patent in suit (see column 1, lines 30 to 31 and page 2, lines 26 to 28 of the patent in suit).

The disputed disclaimer has the effect to exclude four out of the five compositions disclosed in the illustrative examples of this document comprising a nonionic surfactant of the type used in the patent in suit, i.e. examples I, II, III and V, since these compositions have a weight ratio of nonionics to dissolution aid of less than 10:1.

1.1.5 The Board concludes thus that a great part of the disclaimer cannot be considered to be based on the teaching of document (6) and that the disclaimer, rendering the claimed subject-matter more distant from the teaching of relevant prior art cited under Article 54(2) EPC, provides an unwarranted advantage to the Appellants.

Consequently this disclaimer is inadmissible under Article 123(2) EPC according to the principles set out in G 1/03.

The main request is thus to be rejected.

2. *First and Second Auxiliary Requests.*

Since the respective claims 1 of both the first and second auxiliary requests contain the same disclaimer discussed above with regard to the main request, also these requests have to be rejected for the same reasons given above.

Under the circumstances of this case there is thus no need to discuss all the other objections raised by the Respondent.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

P. Krasa