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**Datasheet for the decision
of 25 February 2008**

Case Number: T 0592/06 - 3.2.07

Application Number: 99942609.1

Publication Number: 1121306

IPC: B65D 81/02

Language of the proceedings: EN

Title of invention:

A packaged product comprising tablets

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Unilever PLC

Headword:

-

Relevant legal provisions:

EPC Art. 56

Relevant legal provisions (EPC 1973):

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Keyword:

"Inventive step - no"

Decisions cited:

-

Catchword:

-



Case Number: T 0592/06 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 25 February 2008

Appellant:
(Opponent)

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Respondent:
(Patent Proprietor)

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Representative:

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Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
4 April 2006 concerning maintenance of European
patent No. 1121306 in amended form.

Composition of the Board:

Chairman: H. Meinders
Members: P. O'Reilly
I. Beckedorf

Summary of Facts and Submissions

- I. Opposition was filed against European patent No. 1 121 306 as a whole based on Article 100(a) EPC (lack of inventive step).

The opposition division decided to maintain the patent in amended form. It held that the subject-matter of claim 1 of the second auxiliary request was novel and involved an inventive step.

- II. The appellant (opponent) filed an appeal against that decision.

It requested that the decision under appeal be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form in accordance with the main request filed with letter dated 24 January 2008.

- III. Oral proceedings were held before the Board on 25 February 2008. Although duly summoned the appellant did not appear at the oral proceedings as it had already indicated in its fax dated 20 February 2008.

- IV. The independent claim of the main request reads as follows:

"1. A packaged product (1) comprising the combination of a tablet (20) with a packaging system (3) containing the tablet (20), the tablet (20) having a longitudinal axis, characterised in that the tablet (20) has a

diametrical fracture stress of between 15 and 65 kilo Pascal, the packaging system (3) being at least partly formed from a material (31) which is in a plane comprising the longitudinal axis (200) of the tablet (20), whereby the material (31) has a flat crushability of between 50 and 800 kilo Pascal, whereby the packaging system (3) comprises the combination of a cardboard box (30) and of a plastic bag, and whereby the tablets are arranged in pairs in plastic bags, each pair of tablets being side by side, in such a manner that their longitudinal axes (200) are parallel, and the tablets are piled along their longitudinal axes to form a stack configuration."

V. The documents cited in the present decision are the following:

D1: EP-A-0 716 144
D3: WO-A-90/11887
D5: WO-A-96/05105

VI. The arguments of the appellant may be summarised as follows:

- (i) Claim 1 of the main request, as amended, is not clear and does not comply with Article 123(2) EPC.
- (ii) The subject-matter of claim 1 of this request lacks an inventive step. D1 discloses a tablet having a diametrical fracture stress within the range specified in claim 1. Moreover, it is indicated therein that two tablets are sufficient for an average wash load. The flat crushability range specified in the claim for the packaging

material covers conventional values as shown by D3. D5 teaches a multiple row layer of tablets arranged side by side and that the tablets can be individually packed. Since D1 discloses two tablets for one wash load the skilled person would be motivated to wrap the two tablets together. The packaging of two tablets in a bag inevitably means that they would be side by side.

VII. The arguments of the respondent may be summarised as follows:

- (i) A basis for the amendments to claim 1 may be found in the description in column 6, lines 49 to 58. Also, the claim is clear.

- (ii) The subject-matter of claim 1 of the main request involves an inventive step. D1 is the closest prior art document. There is a problem with tablets that if they are compressed too highly they are difficult to dissolve, but if they are not compressed enough they break easily in transport. The solution of the respondent is not to compress them too highly but to provide them with a particular strength of packaging. Moreover, the tablets are arranged in such a way as to increase the solidarity of the tablet array. There are in fact other directions which the skilled person could take (and has taken) to solve the problem, such as including suitable additives to the tablets or providing a coating as is done in D1. D5 gives no hint to the solution proposed in the patent in suit since this document discloses wrapping the tablets individually in film as

opposed to wrapping in pairs. There is in fact no incentive for the skilled person to combine the teachings of D1 and D5.

Reasons for the Decision

1. *Compliance of the amendments to claim 1 with the Convention*

It is not necessary to consider whether the amendments made to claim 1 of the main request comply with the Convention since the subject-matter of the claim lacks an inventive step as is explained below.

2. *Inventive step*

- 2.1 The closest prior art is represented by D1 which discloses a tablet having a longitudinal axis, wherein the tablet has a diametrical fracture stress of between 15 and 65 kilo Pascal (see compositions on page 9).

- 2.2 Claim 1 specifies that at least some of the (packaging) material which is in a plane comprising the longitudinal axis of the tablet has a flat crushability of between 50 and 800 kilo Pascal. This wording is not entirely clear but from the description it emerges that this is the material which extends parallel to the longitudinal axes of the tablets. There is nothing to suggest that this very broad range of values is anything other than normal for a packaging material for detergent tablets. In any case D3, which has general applicability, discloses two examples of packaging material having a flat

crushability value within this range (see table on page 5).

- 2.3 The claim is further distinguished over D1 in that the tablets are arranged in pairs in plastic bags, each pair of tablets being side by side, in such a manner that their longitudinal axes are parallel, and the tablets are piled along their longitudinal axes to form a stack configuration.

With regard to the arrangement of the tablets in the packaging the Board first notes that the skilled reader of D1 when carrying out its teaching is automatically faced with the problem of how to arrange the therein disclosed cylindrical tablets in their packaging. In this respect it was known that tablets are breakable (see page 2, lines 20 to 22 of D1). Packaging the tablets loosely will result in tablets being broken in transport and stockage, and an inefficient use of space. The skilled person would therefore have considered D5 which deals with the problems of better use of the space and preventing damage to tablets (see page 1, third to fifth lines from the bottom, and page 2, lines 3 to 5). In this document it is proposed to arrange cylindrical tablets with their longitudinal axes parallel and in rows. The tablets are moved into the packaging by layers and the superposition of the layers means that the tablets are piled along their longitudinal axes to form stacks.

Claim 1 further specifies that the tablets are arranged by pairs in plastic bags. According to D1 (see page 6, lines 46 to 49) two tablets are necessary for an average load though one tablet could be used for a small or

lightly soiled load, or more than two could be used for a large or soiled load. The skilled person would therefore be aware that the tablets of D1 are usually used in pairs. From D5 the skilled person would also know that damage to the tablets can be reduced when the individual tablets are protected by paper or a film (see page 9, last paragraph). When considering applying a film packaging to the tablets the skilled person would wish that the consumer need only open one package in order to use the tablets. Since the average dosage is two tablets the skilled person would choose to envelop the tablets in pairs and thus present the consumer with the average dosage. The pairs would have to be packaged side by side since otherwise the packaging process disclosed in D5 could not be used as that process requires the tablets to be introduced into the package one layer at a time.

The respondent argued that packaging the tablet in pairs increases the stability of the packaged tablets, referring to the top part of column 7 of the patent in suit. However, that part of the description in fact refers to the stability produced by the alignment of the tablets to form stacks extending along the longitudinal axis. The feature of the stack arrangement, however, is already known from D5. In fact, the argument of the respondent would depend upon the manner in which the tablets are arranged within the plastic bags. In order to achieve any effect a tight packaging would be required. There is, however, no indication in the patent in suit of how the tablets are arranged within the plastic bags. The argument of the respondent is therefore not based on features of the claim.

2.4 Therefore, the subject-matter of claims 1 of the main request does not involve an inventive step in the sense of Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders