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**Datasheet for the decision
of 11 February 2009**

Case Number: T 1683/06 - 3.3.06

Application Number: 97933510.6

Publication Number: 1002040

IPC: C11D 3/386

Language of the proceedings: EN

Title of invention:

Cleaning compositions comprising a specific oxygenase

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Unilever N.V.

Headword:

Oxygenases/PROCTER & GAMBLE

Relevant legal provisions:

-

Relevant legal provisions (EPC 1973):

EPC Art. 83, 56

Keyword:

"Sufficiency of disclosure (yes)"

"Inventive step (yes): not obvious to try with expectation of success"

Decisions cited:

T 0149/93

Catchword:

-



Case Number: T 1683/06 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 11 February 2009

Appellant: Unilever N.V.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
22 September 2006 concerning maintenance of
European patent No. 1002040 in amended form.

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
A. Pignatelli

Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division to maintain in amended form European patent no. 1 002 040 concerning a cleaning composition comprising a specific oxygenase.

II. In its notice of opposition the Opponent, referring *inter alia* to documents

(1): WO-98/28400;

(2): GB-A-282588;

(5): DE-A-1944904;

(6): EP-A-86139 and

(7): DE-A-4445088,

sought revocation of the patent on the grounds of Article 100(a) EPC 1973, because of lack of novelty and inventive step of the claimed subject-matter, and of Article 100(b) EPC 1973.

III. With respect to then pending set of 23 claims according to the main request, the Opposition Division found in its decision *inter alia* that

- the patent in suit disclosed the invention in a manner sufficiently clear and complete to be carried out by a person skilled in the art;

- the subject-matter of the claims was novel over document (1) and involved an inventive step over the cited prior art.

IV. Claim 1 according to then pending main request read as follows:

"1. A cleaning composition comprising a surfactant and a polyphenol and/or heterocyclic substrate based oxygenase selected from the group consisting of

1.13.11.1	CATECHOL 1,2-DIOXYGENASE
1.13.11.3	PROTocatechuATE 3,4-DIOXYGENASE
1.13.11.4	GENTISATE 1,2-DIOXYGENASE
1.13.11.5	HOMOgentisATE 1,2-DIOXYGENASE
1.13.11.6	3-HYDROXYANTHRANILATE 3,4-DIOXYGENASE
1.13.11.8	PROTocatechuATE 4,5-DIOXYGENASE
1.13.11.9	2,5-DIHYDROXYPYRIDINE 5,6-DIOXYGENASE
1.13.11.10	7,8-DIHYDROXYKYNURENATE 8,8A-DIOXYGENASE
1.13.11.14	2,3-DIHYDROXYBENZOATE 3,4-DIOXYGENASE
1.13.11.15	3,4-DIHYDROXYPHENYLACETATE 2,3-DIOXYGENASE
1.13.11.16	3-CARBOXYETHYLcATECHOL 2,3-DIOXYGENASE
1.13.11.17	INDOLE 2,3-DIOXYGENASE
1.13.11.22	CAFFEATE 3,4-DIOXYGENASE
1.13.11.23	2,3-DIHYDROXYINDOLE 2,3-DIOXYGENASE

1.13.11.28	2,3-DIHYDROXYBENZOATE 2,3-DIOXYGENASE
1.13.11.35	PYROGALLOL 1,2-OXYGENASE
1.13.11.36	CHLORIDAZON-CATECHOL DIOXYGENASE
1.13.11.37	HYDROXYQUINOL 1,2 DIOXYGENASE
1.13.11.38	1 -HYDROXY-2 NAPHTHOATE 1,2 DIOXYGENASE
1.13.11.39	BIPHENYL-2,3-DIOL 1,2 DIOXYGENASE
1.13.11.41	2,4'-DIHYDROXYACETOPHENONE DIOXYGENASE
1.13.11.42	INDOLEAMINE-PYRROLE 2,3 DIOXYGENASE
1.13.11.43	LIGNOSTILBENE $\alpha\beta$ -DIOXYGENASE
1.13.12.11	METHYLPHENYL TETRAHYDROPYRIDINE N-MONOOXYGENASE
1.14.11.3	PYRIMIDINE-DEOXYNUCLEOSIDE 2'-DIOXYGENASE
1.14.11.6	THYMINE DIOXYGENASE
1.14.11.9	NARINGENIN 3-DIOXYGENASE
1.14.11.10	PYRIMIDINE-DEOXYNUCLEOSIDE 1'-DIOXYGENASE
1.14.11.11	HYOSCIAMINE (6S)-DIOXYGENASE
1.14.11.12	GIBERELLIN-44 DIOXYGENASE
1.14.11.13	GIBERELLIN 2 β -DIOXYGENASE
1.14.11.14	6 β -HYDROXYHYOSCIAMINE EPOXIDASE
1.14.11.15	GIBERELLIN 3 β -DIOXYGENASE
1.14.12.1	ANTHRANILATE 1,2-DIOXYGENASE (DEAMINATING, DECARBOXYLATING)
1.14.12.2	ANTHRANILATE 2,3-DIOXYGENASE
1.14.12.4	3-HYDROXY-2-METHYLPIRIDINECARBOXYLATE DIOXYGENASE
1.14.12.5	5-PYRIDOXATE DIOXYGENASE
1.14.12.6	2-HYDROXYCYCLOHEXANONE 2-MONOOXYGENASE
1.14.12.7	PHTALATE 4,5 DIOXYGENASE
1.14.12.10	BENZOATE 1,2-DIOXYGENASE
1.14.12.11	TOLUENE DIOXYGENASE
1.14.12.12	NAPHTALENE 1,2 DIOXYGENASE
1.14.13.1	SALICYLATE 1-MONOOXYGENASE
1.14.13.2	4-HYDROXYBENZOATE 3-MONOOXYGENASE /HYDROLASE
1.14.13.3	4-HYDROXYPHENYLACETATE 3-MONOOXYGENASE
1.14.13.4	MELILOTATE 3-MONOOXYGENASE
1.14.13.5	IMIDAZOLACETATE 4-MONOOXYGENASE
1.14.13.6	ORCINOL 2-MONOOXYGENASE
1.14.13.8	DIMETHYLANILINE MONOOXYGENASE (N-OXIDE-FORMING)
1.14.13.9	KYNURENINE 3-MONOOXYGENASE
1.14.13.10	2,6-DIHYDROXYPYRIDINE 3-MONOOXYGENASE
1.14.13.11	TRANS-CINNAMATE 4-MONOOXYGENASE
1.14.13.12	BENZOATE 4-MONOOXYGENASE
1.14.13.14	TRANS-CINNAMATE 2-MONOOXYGENASE
1.14.13.16	CYCLOPENTANONE MONOOXYGENASE
1.14.13.18	4-PHENYLHYDROXYACETATE 1-MONOOXYGENASE
1.14.13.21	FLAVONOID 3'-MONOOXYGENASE
1.14.13.22	CYCLOHEXANONE MONOOXYGENASE
1.14.13.23	3-HYDROXYBENZOATE 4-MONOOXYGENASE
1.14.13.24	3-HYDROXYBENZOATE 6-MONOOXYGENASE
1.14.13.27	4-AMINOBENZOATE 1-MONOOXYGENASE
1.14.13.29	4-NITROPHENOL 2-MONOOXYGENASE
1.14.13.31	2-NITROPHENOL 2-MONOOXYGENASE
1.14.13.33	4-HYDROXYBENZOATE 3-MONOOXYGENASE

1.14.13.35	ANTHRANILATE 3-MONOOXYGENASE
1.14.13.36	5-O-(4-COUMAROYL)-D-QUINATE 3'-MONOOXYGENASE
1.14.13.38	ANHYDROTETRACYCLINE MONOOXYFENASE
1.14.13.40	ANTHRANILOYL-CoA MONOOXYGENASE
1.14.13.43	QUESTIN MONOOXYGENASE
1.14.13.44	2-HYDROXYBIPHENYL 3-MONOOXYGENASE
1.14.13.46	(-)-MENTHOL MONOOXYGENASE
1.14.14.3	ALKANAL MONOOXYGENASE (FMN-LINKED) /BACTERIAL LUCIFERASE
1.14.15.2	CAMPHOR 1,2-MONOOXYGENASE
1.14.16.3	ANTHRANILATE 3-MONOOXYGENASE
1.14.16.6	MANDELATE 4-MONOOXYGENASE
1.14.17.1	DOPAMINE B-MONOOXYGENASE /DOPAMINE B-HYDROXYLASE
1.14.99.2	KYNURENINE 7,8-HYDROXYLASE
1.14.99.15	4-METHOXYBENZOATE MONOOXYGENASE (O-DEMETHYLATING)
1.14.99.20	PHYLLUQUINONE MONOOXYGENASE (2,3-EPOXIDIZING)
1.14.99.23	3-HYDROXYBENZOATE 2-MONOOXYGENASE, and/or mixtures thereof.

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Dependent claims 2 to 17 related to specific embodiments of the product of claim 1.

Independent claims 18, 19 and 23 read as follows:

"18. A fabric softening composition comprising polyphenol and/or heterocyclic substrate based oxygenase and a cationic surfactant comprising two long chain lengths of C₁₁-C₂₂."

"19. Use of a polyphenol and/or heterocyclic substrate based oxygenase in a cleaning and/or softening composition for fabric cleaning and/or fabric stain removal and/or fabric whiteness maintenance and/or fabric softening and/or fabric colour appearance and/or fabric dye transfer inhibition."

"23. Use of a polyphenol and/or heterocyclic substrate based oxygenase in a cleaning and/or softening composition for the sanitisation of the treated surfaces."

Claims 20 to 22 related, respectively, to the use of a polyphenol and/or heterocyclic substrate based oxygenase in a cleaning composition for cleaning hard surfaces, for hand and machine dishwashing, and for oral and/or dental applications.

V. An appeal was filed against this decision by the Opponent (Appellant).

The Appellant submitted with the statement of the grounds of appeal the following documents:

(9): WO-95/26393;

(10): US-A-3635828.

In its reply to the statement of the grounds of appeal, the Respondent and Patent Proprietor submitted with the letter dated 19 June 2007 an experimental report.

With the letter dated 9 January 2009 the Respondent submitted sets of claims according to the main request and to the first to ninth auxiliary requests, the claims according to the main request being those found by the Opposition Division to comply with the requirements of the EPC.

Oral proceedings were held before the Board on 11 February 2009.

During oral proceedings the Respondent withdrew all the requests submitted previously and filed new sets of claims according to the main and to the first to fourth auxiliary requests.

VI. In the set of 23 claims according to the main request submitted during oral proceedings before the Board claims 1 to 17 are identical to claims 1 to 17 according to the set of claims considered by the

Opposition Division to comply with the requirements of the EPC (see point IV above).

Claims 18 to 23 differ instead from claims 18 to 23 according to the older main request only insofar as **the polyphenol and/or heterocyclic substrate based oxygenase is required to be one as defined in claim 1.**

VII. As regards sufficiency of disclosure the Appellant submitted in essence that

- it was possible for the skilled person at the priority date of the patent in suit to prepare a composition comprising a surfactant and an oxygenase selected from one of the 80 classes identified in claim 1;

- however, according to the invention, the oxygenases used had to give a colour difference dE of 1 or more versus an unspecified monophenol monooxygenase when tested on tea-stained, coffee-stained and red-wine stained standard test cotton fabrics;

- since the class of the monophenol monooxygenases comprised at least 21 different enzymes, it thus constituted undue burden for the skilled person to require to test all these control enzymes in order to assess whether the required improvement in colour difference had been achieved or not;

- moreover, as evidenced by document (1), the Appellant had already carried out a research program in the same technical field as the patent in suit and had found that most oxygenases were not suitable for application

in laundry washing since they darkened coloured stains instead of bleaching them; therefore, it constituted also undue burden to require from the skilled person to find out which specific oxygenases belonging to the 80 classes selected did not show this drawback;

- the invention thus did not comply with the requirements of Article 83 EPC.

The Appellant submitted further *inter alia* that

- the wording of claim 1 encompassed oxygenases belonging to the classes 1.14.12.11 (toluene dioxygenase), 1.14.12.12 (naphtalene 1,2 dioxygenase) and 1.14.13.22 (cyclohexanone monooxygenase) which were not polyphenol oxidases or heterocyclic substrate based oxygenases as required otherwise in the claim;

- the claimed subject-matter was novel over the cited prior art;

- the technical problem addressed to in the patent in suit, i.e. the provision of a cleaning composition which provides effective and efficient cleaning of coloured and everyday body soils and/or stains while providing excellent safety for the fabrics colour, had already been solved in documents (9) and (10) by means of the use of a lipoxidase, an oxygenase belonging to a class which is not listed in claim 1;

- the experimental evidence submitted by the Respondent with the reports of 12 August 2005 and 12 July 2006 during opposition proceedings and with that of 19 June 2007 during appeal showed that 4 types of oxygenases

were able to effectively bleach some coloured stains on fabric;

- however, since it was known that oxygenases could darken coloured stains instead of bleaching them, the experimental evidence submitted by the Respondent would not credibly demonstrate that all the 80 classes of oxygenases listed in claim 1 would effectively bleach coloured stains;

- therefore, the technical problem addressed to in the patent in suit had not been credibly solved throughout the whole extent of claim 1;

- consequently, the technical problem solved by the invention amounted only to the provision of an alternative detergent composition comprising a surfactant and an oxygenase;

- since it was known to the skilled person, for example, from documents (2), (5) and (7), that oxygenases could be used in bleaching compositions for improving their cleaning capability, it was obvious for the skilled person to try other known oxygenases instead of the lipoxidase used in document (9) with a reasonable expectation of success (see e.g. decision T 149/93);

- moreover, it would have been also obvious to the skilled person that oxygenases were able to bring about a sanitising effect onto the treated surface because of their known capability of introducing oxygen into a substrate;

- therefore, the subject-matter of claim 1 and the claimed uses of an oxygenase as defined in claim 1 in cleaning compositions did not involve an inventive step.

The Appellant did not submit any argument with regard to the subject-matter of claim 18 relating to a fabric softening composition containing an oxygenase as defined in claim 1 and to the use of such oxygenases in a fabric softening composition as encompassed by claims 19 and 23.

VIII. The Respondent submitted *inter alia* that

- the skilled person would have been able to put into practice the invention over the whole claimed range by following the teaching of the patent in suit;

- the Appellant had not submitted any evidence of its allegation that most of the selected oxygenases would not be useful for bleaching coloured stains during laundry washing;

- the claims did not contain any requirement to test the selected oxygenases versus a monophenol monooxygenase;

- therefore, the invention was sufficiently disclosed;

- the claimed subject-matter was novel over the cited prior art;

- all the oxygenases listed in claim 1 were considered to be a polyphenol oxygenase or a heterocyclic substrate based oxygenase;

- the technical problem identified in the patent in suit had been successfully solved by means of the selected classes of oxygenases as shown in the experimental reports of 12 August 2005, 12 July 2006 and 19 June 2007; the selected oxygenases provided also sanitisation of the treated surfaces;
- documents (2), (5) and (7), though suggesting in general the use of oxygenases in fabric bleaching compositions, did not identify any specific type of oxygenase suitable for this purpose;
- moreover, it was known that oxygenases could darken coloured stains and documents (9) and (10) were the only documents identifying a specific oxygenase, namely lipoxidase, for bleaching coloured stains on fabrics;
- therefore, the skilled person would not have found any motivation in the prior art to replace the lipoxidases used in document (9) with a different oxygenase as specified in claim 1 for use in a cleaning composition with the expectation of solving the technical problem addressed to in the patent in suit;
- furthermore, even though the main focus of the patent in suit was on cleaning, the selected classes of oxygenases had been found to be useful and not detrimental also in softening compositions;
- therefore, the claimed subject-matter involved an inventive step.

- IX. The Appellant requests that the decision under appeal be set aside and that the patent be revoked.

- X. The Respondent requests that the patent be maintained on the basis of the main request or of the first to fourth auxiliary requests filed during oral proceedings before the Board.

Reasons for the Decision

1. Main request

1.1 *Article 83 EPC 1973*

- 1.1.1 The invention of the patent in suit concerns cleaning and softening compositions comprising a specific polyphenol and/or heterocyclic substrate based oxygenase as defined in claim 1 as well various uses of these oxygenases in a cleaning and/or softening composition (see points IV and VI above).

In the Board's view the patent in suit teaches that the cleaning compositions of the invention provide effective and efficient cleaning of everyday body soils and coloured stains and/or soils and, in particular, fabric realistic items cleaning and whitening while providing colour safety; moreover, they provide sanitisation of the treated surfaces (see page 4, lines 1 to 3 and 14). According to the patent in suit all the classes of oxygenases listed in claim 1 do not darken polyphenolic stains nor fade sensitive dyes (page 4, lines 11 to 13) and are suitable for the purpose of the invention (see paragraph 22).

Therefore, even though the description teaches explicitly that all the oxygenases of the invention pass the stain removal performance tests described in paragraph 17 (see page 3, lines 31 to 32), which tests require a comparison with a not nearly specified monophenol monooxygenase (see paragraph VII above), the skilled person would have derived from the teaching of the patent in suit that the invention does not require any testing against a monophenol monooxygenase but just the selection of any oxygenase from the list of classes reported in claim 1, which fact does not represent an undue burden for the skilled person.

- 1.1.2 The Appellant's allegation that most of the selected oxygenases would not be useful in laundry washing because they would darken coloured stains instead of bleaching them has not been supported by any evidence. Moreover, document (1), a not pre-published document cited by the Appellant, only indicates in general that laccases and polyphenol oxidases in nature (page 2, lines 19 to 22) cause darkening of polyphenolic substrates and does not refer this behaviour to any specific oxygenase.

On the other hand, the Respondent has shown in the experimental reports of 12 August 2005, 12 July 2006 and 19 June 2007 that 4 types of oxygenases according to the invention are able to effectively bleach some coloured stains on fabric and to prevent dye transfer.

The Appellant did not contest that these experimental reports show effective bleaching for those 4 classes of oxygenases. Moreover, the Appellant did not contest

that these oxygenases would sanitise the treated substrate.

The Board thus has no reason to assume that any of the oxygenases belonging to the classes listed in claim 1 would not be able to provide the technical effects indicated in the description.

Moreover, the fact that some of the oxygenases listed in claim 1 such as those belonging to the classes 1.14.12.11 (toluene dioxygenase), 1.14.12.12 (naphtalene 1,2 dioxygenase) and 1.14.13.22 (cyclohexanone monooxygenase) would not belong properly to the general class of polyphenol and/or heterocyclic substrate based oxygenases indicated in claim 1 cannot change this finding as it is clear from the teaching of the patent in suit that all the oxygenases listed in claim 1 have a similar behaviour.

Furthermore, the Appellant did not dispute that a skilled person would have been able to prepare the cleaning and softening compositions claimed by following the teaching of the patent in suit.

The Board thus concludes that the invention is sufficiently disclosed.

1.2 *Articles 123(2) and(3) EPC; Novelty*

The Board is satisfied that the claims according to the main request comply with the requirements of Articles 123(2) and (3) EPC and are novel over the cited prior art.

Since the Appellant did not raise any objection in this respect further details are unnecessary.

1.3 *Inventive step*

1.3.1 The invention of claim 1 relates to a cleaning composition comprising a surfactant and a polyphenol and/or heterocyclic substrate based oxygenase selected from the group of 80 classes listed in the claim (see point IV above).

As explained in the description of the patent in suit, it is often difficult to remove effectively coloured stains and soils from a soiled item. In particular, highly coloured stains and soils derived from fruit and/or vegetables are particularly challenging soils to remove. In addition, the complex nature of everyday "body" soils typically found on pillow cases, T-shirts, collars and socks, provides a continuous thorough cleaning challenge for detergents. These soils are difficult to remove completely and often residues build up on fabric leading to dinginess and yellowing. Everyday body soils are also found on sanitary and kitchen surfaces such as bathtubs, toilet bowl and dishware (paragraphs 3 and 4). In view of the above, there existed a continuous need to provide cleaning compositions which have an excellent detergency performance (paragraph 7).

Therefore, the technical problem underlying the invention is formulated in the patent in suit as the provision of a cleaning composition which provides effective and efficient cleaning of coloured and everyday body soils and/or stains, provides fabric

realistic items cleaning and whitening while providing excellent safety for the fabrics' colours (paragraph 9).

Moreover, the compositions of the invention should provide sanitisation of the treated surfaces (paragraphs 9 and 20) and should be applicable in dishwashing, household cleaning, oral/dental care and fabric rinse softening (paragraphs 10, 20 and 34).

- 1.3.2 Both parties agreed that document (9) represents the most suitable starting point for evaluating inventive step. In fact, this document deals explicitly with technical problems similar to those addressed to in the patent in suit, in particular with the bleaching of coloured/bleachable soils derived from fruit and vegetables and the prevention of the redeposition of coloured/bleached soils onto other cleaned articles; moreover, the compositions of document (9) are applicable not only to fabrics but also to hard surfaces (see passage bridging pages 1 and 2; page 2, lines 20 to 29; page 3, lines 1 to 30).

Document (10), though relating to a similar subject-matter, deals only with the treatment of fabrics (see column 1, lines 38 to 68) and thus is less suitable as a starting point than document (9).

The Board thus takes document (9) as the most appropriate starting point for the evaluation of inventive step.

- 1.3.3 Since document (9) had already solved, at least partly, the technical problems addressed to in the patent in suit, the technical problem underlying the invention

has to be defined in the Board's view as the provision of an alternative cleaning composition which provides at least a similar bleaching of coloured stains and everyday body soils and/or stains and a similar dye transfer prevention thereby providing realistic items cleaning and whitening on fabrics with excellent safety for the fabrics' colours, which composition is, additionally, able to sanitise the treated surface.

As taught in the patent in suit, the selected classes of oxygenases contribute to bleaching effectively *inter alia* coloured stains without darkening them and without any fading of sensitive dyes (see paragraph 19) and, additionally, to sanitising the treated surfaces (paragraph 20).

As explained hereinabove (point 1.1.2), the Board has no reason to contest that all the classes of oxygenases listed in claim 1 provide these technical effects.

Therefore, the Board finds that the technical problem underlying the invention has been convincingly solved by means of a composition according to claim 1.

- 1.3.4 As agreed by both parties, the compositions disclosed in document (9) differ from those according to claim 1 only insofar as the used oxygenase is a lipoxidase, which is not a polyphenol or heterocyclic substrate oxygenase as the oxygenases listed in claim 1.

Neither this document nor document (10) contain any suggestion to use any other type of oxygenase for bleaching effectively coloured stains and prevent dye transfer during cleaning.

Moreover, both parties have submitted that the skilled person was aware, at the priority date of the patent in suit, that oxygenases could not bleach effectively coloured stains because they could cause a darkening of the stains (see paragraphs VII and VIII and the patent in suit, page 4, lines 11 to 12).

Furthermore, even though the prior art had already recognised that oxygenases in general could be useful as alternative or in addition to other enzymes in bleaching compositions for increasing the bleaching effect and sanitising the treated surfaces (see e.g. documents (2), lines 23 to 32 and 39 to 47; (5), page 1, first and last full paragraphs; and (7), page 2, lines 42 to 57, page 2, line 68 to page 3, line 2, page 3, line 50), none of these documents mention any specific type of oxygenase.

In fact, the cited prior art does not contain any indication of any oxygenase suitable for effectively bleaching coloured stains apart from the lipoxidases used in documents (9) and (10).

The Board thus finds that the prior art did not contain any motivation for the skilled person, aware of the known drawbacks of oxygenases, to try any polyphenol or heterocyclic substrate oxygenase as a possible replacement of the lipoxidase used in document (9). The Board finds also that a skilled person would have tried instead perhaps an oxygenase structurally similar to lipoxidase but he would not have tried a polyphenol or heterocyclic substrate oxygenase as defined in claim 1 with an expectation of success.

Therefore, the selection of the classes of oxygenases of claim 1 cannot be considered to have been one which the skilled person would have carried out in expectation of some improvement or advantage (see T 149/93, point 5.2 of the reasons). The finding of this decision thus does not apply to the present case.

The Board concludes that the subject-matter of claim 1 involves an inventive step.

Since the subject-matter of claim 1 has been found to be inventive already on these grounds there is no need to discuss in details the experimental evidence submitted by the Respondent.

- 1.3.5 Independent claim 18 relates to a fabric softening composition comprising an oxygenase as defined in claim 1 and a cationic surfactant comprising two long chain lengths of C₁₁-C₂₂.

The Appellant did not raise any specific objection against this claim.

The Board remarks also that the cited prior art does not disclose the inclusion of an oxygenase in a softening composition.

The Board thus finds that the prior art did not contain any motivation for the skilled person to add an oxygenase as defined in claim 1 to a softening composition with the expectation of achieving a beneficial effect not detrimental to the composition, as submitted by the Respondent during oral proceedings (see point VIII above).

The Board remarks in this respect that, for example, a successful sanitisation of the treated surfaces by means of a composition comprising an oxygenase as defined in claim 1 has not been disputed by the Appellant.

The Board concludes that the subject-matter of claim 18 also involves an inventive step.

1.3.6 Since the cleaning composition of claim 1 and the softening composition of claim 18 have been found to involve an inventive step, all the claims dependent on claim 1 and the use claims 19 to 23 relating to the use of an oxygenase as defined in claim 1 in a cleaning and/or softening composition involve also *mutatis mutandis* an inventive step for the same reasons put forward hereinabove.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to maintain the patent on the basis of the main request filed during oral proceedings before the Board and a description to be adapted.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke