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**Datasheet for the decision  
of 23 September 2009**

**Case Number:** T 1774/07 - 3.3.06

**Application Number:** 01987100.3

**Publication Number:** 1337619

**IPC:** C11D 17/04

**Language of the proceedings:** EN

**Title of invention:**

Detergent products, methods and manufacture

**Patentee:**

THE PROCTER & GAMBLE COMPANY

**Opponent:**

Henkel Kommanditgesellschaft auf Aktien  
Reckitt Benckiser (UK) Limited

**Headword:**

Water-soluble pouch/PROCTER & GAMBLE

**Relevant legal provisions:**

EPC Art. 108  
EPC R. 99(2)  
RPBA Art. 12(1), 13(1), 13(3)

**Relevant legal provisions (EPC 1973):**

EPC Art. 56, 107

**Keyword:**

"Admissibility of appeal (yes): erroneous argumentation has no bearing on the admissibility of the appeal"

"Admissibility of late filed documents (no) - late submissions of party as of right to the proceedings not within the legal and factual frame of the admissible appeal"

"Admissibility of requests filed during oral proceedings (yes)"

"Inventive step (main request and first to third auxiliary requests): no"

"Inventive step (fourth auxiliary request): yes"

**Decisions cited:**

G 0009/92, T 0188/05

**Catchword:**

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Case Number: T 1774/07 - 3.3.06

**DECISION**  
of the Technical Board of Appeal 3.3.06  
of 23 September 2009

**Appellant:** Reckitt Benckiser (UK) Limited  
(Opponent 02) Dansom Lane  
Hull HU8 7DS (GB)

**Representative:** Bowers, Craig Malcolm  
Reckitt Benckiser  
Corporate Services Limited  
Legal Department - Patents Group  
Dansom Lane  
Hull HU8 7DS (GB)

**Respondent:** THE PROCTER & GAMBLE COMPANY  
(Patent Proprietor) One Procter & Gamble Plaza  
Cincinnati  
Ohio 45202 (US)

**Representative:** Samuels, Lucy Alice  
Gill Jennings & Every LLP  
Broadgate House  
7 Eldon Street  
London EC2M 7LH (GB)

**Other Party:** Henkel Kommanditgesellschaft auf Aktien  
(Opponent 01) Henkelstrasse 67  
D-40589 Düsseldorf (DE)

**Representative:** Stevermann, Birgit  
Henkel AG & Co. KGaA  
VTP Patente  
D-40191 Düsseldorf (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
1 October 2007 concerning maintenance of  
European patent No. 1337619 in amended form.

**Composition of the Board:**

**Chairman:** P.-P. Bracke  
**Members:** L. Li Voti  
J. Geschwind

## Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division to maintain in amended form the European patent no. 1 337 619 concerning a method of washing dishware/tableware in an automatic dishwashing machine.

II. In their notices of opposition the Opponents 01 and 02 sought revocation of the patent on the grounds of Article 100(a) EPC, *inter alia* because of lack of an inventive step of the claimed subject-matter.

The Opponents referred during the opposition proceedings *inter alia* to the following documents:

(1): WO 03/031266; and

(8): EP-A-593952.

III. The Opposition Division found in its decision that the claims according to the then pending third auxiliary request complied with the requirements of the EPC.

In particular, as regards inventive step, the Opposition Division found that

- the patent in suit was concerned with the provision of an automatic dishwashing method whereby incompatible deterative components could be stably held and delivered to the main wash cycle of the automatic dishwasher;

- document (8) was the most suitable starting point for the evaluation of inventive step;

- the effect arising from the technical features distinguishing the independent claims 1, 3 or 8 from the disclosure of document (8) was not discernible; therefore, the technical problem underlying the invention could only be seen as the provision of a further method of dosing incompatible dishwasher additives into the automatic dishwasher;

- however, starting from the teaching of document (8), the skilled person would not have had any motivation to combine this teaching with that of any of the other cited documents of the prior art for solving the mentioned technical problem;

- therefore, the claimed subject-matter according to then pending third auxiliary request involved an inventive step.

IV. An appeal was filed against this decision by Opponent 02 (Appellant), which submitted its statement of the grounds of appeal with a letter dated 08 February 2008.

The Respondent and Patent Proprietor submitted with its reply of 10 June 2008 an amended set of claims to be considered as first auxiliary request.

Subsequent to the summons to oral proceedings, Opponent 01, which was party as of right to the proceedings under Article 107 EPC, informed the Board with a letter dated 23 March 2009 that it will attend the scheduled oral proceedings.

With a letter dated 15 July 2009 Opponent 01, referring to documents (8), (4), (5) and (21), submitted

arguments against the inventive step of the claimed subject-matter.

With the letters of 21 August and 21 September 2009 the Respondent submitted a reply to the Opponent 01's submissions and an experimental report by Laura Mowbray.

The Appellant informed the Board with a letter dated 15 September 2009 that it will not attend the oral proceedings but it still relied on the written submissions.

Oral proceedings were held before the Board on 23 September 2009.

During oral proceedings the Respondent withdrew the first auxiliary request submitted previously in writing and submitted six amended sets of claims to be considered as first to sixth auxiliary requests, respectively.

- V. The independent claims 1, 3 and 8 according to the Respondent's **main request**, which consists of the set of claims found by the Opposition Division to comply with the requirements of the EPC, read respectively as follows:

"1. A method of washing dishware/tableware in an automatic dishwashing machine using a machine dishwashing product in the form of a water-soluble pouch comprising a plurality of compartments in generally superposed relationship, each containing one or more detergent active or auxiliary components wherein the pouch has a first compartment comprising a

liquid composition and a second compartment comprising a powder composition wherein the weight ratio of the liquid to the solid composition is from 1:30 to 30:1, wherein the pouch has a volume of from 5 to 70 ml and a longitudinal/transverse aspect ratio in the range from 2:1 to 1:8, preferably from 1:1 to 1:4 and wherein the machine dishwashing product is placed within the washing machine dispenser and released during the main cycle of the dishwashing process."

"3. A method of washing dishware/tableware in an automatic dishwashing machine using a machine dishwashing product in the form of a water-soluble pouch comprising a plurality of compartments in generally superposed relationship, each compartment containing one or more detergent active or auxiliary components wherein the pouch has a first compartment comprising a liquid composition wherein the liquid composition comprises non-ionic surfactant and a second compartment comprising a powder composition wherein the weight ratio of the liquid to the solid composition is from 1:30 to 30:1 wherein the pouch comprises upper and lower generally opposing outer walls, a skirt-like side wall and one or more internal partitioning walls, and wherein each of said upper and lower outer walls and said skirt-like side wall are formed by thermoforming, vacuum forming or a combination thereof, and wherein the machine dishwashing product is placed within the washing machine dispenser and released during the main cycle of the dishwashing process."

"8. A method of washing dishware/tableware in an automatic dishwashing machine using a machine dishwashing product in the form of a water-soluble

pouch comprising a plurality of compartments in generally superposed relationship, each compartment containing one more detergent active or auxiliary components wherein the pouch has a first compartment comprising a liquid composition and a second compartment comprising a powder composition wherein the weight ratio of the liquid to the solid composition is from 1:30 to 30:1 wherein the pouch comprises upper and lower generally opposing outer walls, a skirt-like side wall and one or more internal partitioning walls wherein at least one internal partitioning wall is secured to an upper or lower outer wall along a first seal line and one or both of said outer wall and said partitioning wall are secured to the skirt-like side wall along a second seal line and wherein the seal lines are at least partially non-overlapping, and wherein the machine dishwashing product is placed within the washing machine dispenser and released during the main cycle of the dishwashing process."

Dependent claims 2, 4 to 7 and 9 to 18 relate to particular embodiments of the claimed methods.

The set of claims according to the **first auxiliary request** differs from that according to the main request insofar as claims 8 and 9 have been deleted and the other claims as well as any reference contained in the claims have been renumbered as necessary.

The set of claims according to the **second auxiliary request** differs from that according to the main request insofar as claim 3 has been deleted and the other claims as well as any reference contained in the claims have been renumbered as necessary.



The set of claims according to the **third auxiliary request** differs from that according to the main request insofar as claims 3, 8 and 9 have been deleted and the other claims as well as any reference contained in the claims have been renumbered as necessary.

The set of claims according to the **fourth auxiliary request** differs from that according to the main request insofar as claims 1 and 2 have been deleted and the other claims as well as any reference contained in the claims have been renumbered as necessary.

The wordings of the sets of claims according to the fifth and sixth auxiliary requests are not relevant for the present decision.

- VI. The Appellant submitted in writing *inter alia* that
- claims 1, 3 and 8 of the patent as maintained did not contain any feature relating to the solubility of the pouch material used according to the claimed method;
  - however, as explained in the patent in suit, unless the material of the pouch had a certain solubility, there was a significant risk that the ingredients contained in the pouch were dispersed already in the pre-wash cycle of the dishwasher machine program so that the technical problem addressed by the patent in suit could not be considered to have been solved;
  - the skilled person would have considered the pouch disclosed in document (1), though relating to the different neighbouring technical field of laundry

washing, to be suitable for use in a dishwashing process and would have combined the teachings of documents (1) and (8);

- since it had not been demonstrated that the limiting features of claims 1, 3 and 8 brought about the technical effect of improved dispensability of the pouch product as suggested by the Patent Proprietor, these features could not support an inventive step;

- the claimed subject-matter thus lacked an inventive step.

VII. Opponent 01 (party as of right to the proceedings) submitted in writing in essence that the technical features of claims 1, 3 and 8 of the patent as maintained related to the solution of two different partial technical problems; however, the subject-matter of claim 1 lacked an inventive step in the light of the teachings of documents (8) and (4) under consideration, if necessary, of documents (5) and (21) whilst those of claims 3 and 8 lacked an inventive step in the light of the teaching of document (4) under consideration, if necessary, of document (5).

As regards the admissibility of the documents cited for the first time during appeal in its submission of 15 July 2009, Opponent 01 submitted during oral proceedings that the admission of these documents was at the discretion of the Board and that they should be admitted since they were relevant. Moreover, documents (4) and (5) had already been part of the proceedings before the department of first instance. Furthermore, its written submissions intended to correct the

statement of the grounds of appeal which was based on the inadmissible combination of document (8) with document (1).

As regards the auxiliary requests filed by the Respondent during oral proceedings, Opponent 01 submitted that they were inadmissible since they were belated, there was no reason for submitting them during oral proceedings since one auxiliary request had already been submitted in writing and their introduction affected adversely Opponent 01.

As regards inventive step of the claimed subject-matter, Opponent 01 submitted during oral proceedings additionally that

- the technical problem underlying the invention regarded only the provision of an alternative method of dishwashing;

- document (8) taught to use a pouch product in the dispenser of a dishwashing machine and

- all the technical features distinguishing the claimed subject-matter from the disclosure of document (8) were obvious modifications which the skilled person would have tried by using his common general knowledge.

VIII. The Respondent submitted in writing and orally *inter alia* that

- document (1) was a reference cited under Article 54(3) EPC and could not be used for attacking inventive step; therefore, the combination of documents (8) and (1)

discussed in the statement of the grounds of appeal, could not manifestly legally succeed; as a consequence, the statement of the grounds of appeal did not contain any reason why the decision under appeal should be set aside and the appeal thus was inadmissible;

- according to Article 12(1) RPBA the appeal was based on what had been submitted in the statement of the grounds of appeal, in the Respondent's reply to the appeal and in any Board's communication; the belated arguments submitted in writing by Opponent 01 thus could not be considered to be part of the appeal since they amounted themselves to a new case which was different from that raised in the Appellant's submissions; moreover, these new facts had not been submitted in order to correct or extend the original appeal; therefore, their admissibility was a matter of the Board's discretion; however, since they had been submitted after oral proceedings had been summoned they had not to be admitted under Article 13(3) RPBA; therefore, documents (4), (5) and (21) had not to be admitted into the proceedings; in the case that the Board would decide to admit them the proceedings should be continued in writing;

- as regards the introduction of the auxiliary requests during oral proceedings, they did not introduce any new facts since they consisted only in the deletion of one or more claims of the main request, all the other claims remaining identical; therefore, all issues relating to the claims of the auxiliary requests had been already discussed with regard to the main request; their introduction during oral proceedings thus was not

contrary to Article 13(3) RPBA and did not adversely affect Opponent 01;

- the claimed subject-matter solved the technical problem of providing a unitised dose form which was particularly well adapted for introduction via the dispenser compartment of a dishwashing machine and reduced physical and chemical stability problems whilst allowing components such as non-ionic surfactants to be present in their natural liquid form. Moreover, the dissolution properties of both the liquid and powder phases were better than those of the same overall composition when supplied in the form of a highly compacted tablet;

- document (8) did not teach to use a pouch containing at least two compartments, wherein one contains a liquid composition and another one contains a powder composition, in the dispenser of a dishwashing machine for being released during the main wash; these features allowed the use of incompatible ingredients such as liquid ingredients which could not be successfully incorporated into one product and conferred flexibility to the dishwashing method; in fact, the Respondent had found that the incorporation of a liquid ingredient into one single phase gel product which could be contained in a single compartment pouch led to physical and chemical stability problems;

- all technical features of the claims provided their effect during the main wash; moreover, the experimental report by Laura Mowbray showed that a pouch product used according to a method of the patent in suit did not dissolve during the pre-wash cycle;

- furthermore, it had not been proven that the distinguishing features of claims 1, 3 and 8 belonged to the common general knowledge of the skilled person;
  - therefore, the claimed subject-matter involved an inventive step.
- IX. The Appellant as well as Opponent 01 request that the decision under appeal be set aside and that the patent be revoked.
- X. The Respondent requests that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of any of the auxiliary requests 1 to 6 submitted during the oral proceedings before the Board.

## **Reasons for the Decision**

### *1. Admissibility of the appeal*

The Board agrees with the Respondent that the statement of the grounds of appeal contests the inventiveness of the claimed subject-matter by basing itself on a combination of documents which cannot manifestly legally succeed. In fact, one of these documents, i.e. document (1), having been published after the filing date of the patent in suit, can only be state of the art in virtue of Article 54(3) EPC and is not a state of the art which can be used in discussing inventive step.

However, the fact that the Appellant's arguments are erroneous and cannot succeed has no bearing on the admissibility of the appeal as, contrary to the Respondent's submission, the statement of the grounds of appeal contests with facts and arguments the reasoning of the decision under appeal and it thus specifies the legal and factual reasons on which the case for setting aside the decision is based.

Therefore, the appeal complies formally with the requirements of Article 108, third sentence, and Rule 99(2) EPC. Moreover, it is undisputed that the appeal complies with all the other requirements of Articles 106 to 108 EPC.

Therefore, the Board concludes that the appeal is admissible.

2. *Opponent 01's case and admissibility of documents (4), (5) and (21)*
  - 2.1 It is undisputed that Opponent 01 did not submit any appeal and is a party as of right to the proceedings under Article 107 EPC as the Opponent 02's appeal is admissible. Therefore, Opponent 01 had the right to submit its arguments within the legal and factual framework of the admissible appeal within the time limit required by the provisions of the EPC and RPBA (see G 9/92, point 10 of the reasons, OJ 1994, 875).
  - 2.2 According to Article 12(1) RPBA the appeal is based on the notice of appeal and the statement of the grounds of appeal filed pursuant to Article 108 EPC and any written reply of the other parties to be filed within

four months of notification of the grounds of appeal and any communication sent by the Board and any answer thereto filed pursuant to the directions of the Board.

In the present case, Opponent 01 did not submit anything in writing within the due time limit in reply to the statement of the grounds of appeal. Therefore, in the Board's view, Opponent 01, not having replied to the statement of the grounds of appeal within the due time limit, implicitly agreed with the submissions contained therein.

After having been summoned to oral proceedings, Opponent 01 submitted with a fax dated 23 March 2009 only that it intended to attend the oral proceedings and to speak in German.

It was only with a further fax dated 15 July 2009, i.e. only two months before oral proceedings and more than one year after the Respondent's reply of 10 June 2008, that it submitted a thorough argumentation on the inventiveness of the claimed subject-matter based on the combination of document (8), a document cited also in the Appellant's own statement of the grounds of appeal, with documents (4), (5) or (21) which had not been addressed to by the Appellant.

In the Board's view, the Opponent 01's further submissions of 15 July 2009 thus amount to an amendment of the Appellant's initial case.

- 2.3 According to Article 13(1) RPBA any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion which should be exercised in view *inter alia*



of the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. In particular, amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party cannot reasonably be expected to deal with without adjournment of the oral proceedings (Article 13(3) RPBA).

The Board remarks that the submissions of 15 July 2009 do not contain any explanation why they have been submitted so late and do not precise that they were intended to correct the initial appeal's case. Moreover, the case submitted late in writing by Opponent 01 is based on a different analysis of the technical problem underlying the invention and on a different combination of documents from those used in the statement of the grounds of appeal. Furthermore, these combinations of documents had not been brought before against the subject-matter found by the Opposition Division to comply with the requirements of the EPC and some of the cited documents such as documents (4) and (21) had not been even discussed in the decision under appeal. Therefore, Opponent's 01 written submissions amount, in the Board's view, to a fresh case.

- 2.4 The Board finds that in the present case the Respondent, in the absence of any reply by Opponent 01 to the statement of the grounds of appeal, could have only expected that Opponent 01 would present at the oral proceedings arguments within the legal and factual framework of the initial appeal and not a different case. Moreover, the Respondent had only two months time before oral proceedings for preparing itself to the new

case submitted by Opponent 01. This is, independently on the complexity of the newly cited documents, a rather short time and undoubtedly a shorter time than that which is allowed for replying to the statement of the grounds of appeal.

Therefore, the introduction of these new documents into the proceedings without adjourning oral proceedings would have been contrary to the principle of equal treatment of the parties and would adversely affect the Respondent.

The Board thus concludes that, in view of the provisions of Article 13(3) RPBA, documents (4), (5) and (21), independently on their relevance, are not to be introduced into the proceedings (see also T 188/05, point 1 of the reasons).

3. *Admissibility of the Respondent's requests submitted during oral proceedings*

After the discussion of the inventive step of the claims according to the main request during oral proceedings, the Respondent requested to replace the first auxiliary request already present on file with six different auxiliary requests.

Opponent 01 objected to the introduction of these requests since they were belated, they could have been introduced beforehand in writing or even at the beginning of the oral proceedings and their introduction would have adversely affected Opponent 01.

The Board remarks that said six auxiliary requests are based on the claims of the main request and differ from the main request only insofar as one or two of the three independent claims present in the main request have been deleted.

Therefore, these requests do not modify the main point of discussion defined by the decision under appeal and by the statement of the grounds of appeal and did not need any further discussion during oral proceedings since the remaining claims had all been already discussed within the frame of the main request. The introduction of these requests thus could not adversely affect Opponent 01.

Moreover, since the Respondent could not know at the beginning of the oral proceedings the outcome of the discussion on the admissibility of the appeal and of the documents late cited by Opponent 01 and how Opponent 01 would consequently plead against inventive step, it is understandable in the Board's view that it could not formulate at that stage its final requests.

Therefore, the late filing of the auxiliary requests is justified under the circumstances of the case.

The Board concludes that the auxiliary requests submitted during oral proceedings are admissible.

4. *Respondent's main request*

4.1 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 neither the Appellant nor Opponent 01 raised any objection in this respect no further details are necessary.

4.2 Inventive step

4.2.1 The invention of claim 1 according to the Respondent's main request relates to a method of washing dishware/tableware in an automatic dishwashing machine using a machine dishwashing product in the form of a water-soluble pouch comprising a plurality of compartments wherein the machine dishwashing product is placed within the washing machine dispenser and released during the main cycle of the dishwashing process (see also paragraph 1 of the patent in suit).

As explained in the description of the patent in suit, unitised doses of dishwashing detergents such as tablets are considered more attractive and convenient by some consumers because such products do not need to be measured and allow a more precise dosing and avoid wasteful overdosing or underdosing. Moreover, detergent products in pouch form are also known in the art and they have the advantage over tablets of avoiding the contact of the consumer fingers with the dishwashing

composition which may contain bleach and/or other irritant substances (see paragraph 2).

The automatic dishwashing process usually involves an initial pre-wash cycle, a main-wash cycle and several hot rinse cycles. In dishwashers the detergent is generally delivered into the main wash via the dispenser to avoid premature dissolution in the pre-wash. The amount of detergent which can be used is limited by the volume of the dispenser which varies in volume and shape from manufacturer to manufacturer. Unitised dose forms such as tablets can be designed to have a size and shape which fit all machines. However, one of the drawbacks of detergent tablets is the fact that their slow dissolution rate requires the use of complex and expensive disintegrant systems or makes it difficult to achieve differential dissolution of the detergent active ingredients (paragraphs 3 and 4).

Moreover, some detergent ingredients suitable for dishwashing like nonionic surfactants are liquid at room temperature and are typically transported and supplied to detergent manufacturers in liquid form. Therefore, it can be difficult or costly to include them into a solid detergent composition. It thus would be advantageous to have a product which allows the different ingredients to be in their natural state, i. e. liquid or solid (paragraph 6).

The technical problem underlying the invention thus is formulated in the patent in suit as the provision of a multi-compartment unitised dose form capable of fitting the dispensers of different dishwashing machine types and which allows for the simultaneous delivery of

incompatible ingredients and ingredients in different physical forms (paragraph 8).

- 4.2.2 All the parties and the Opposition Division considered document (8) as the most suitable starting point for the evaluation of inventive step.

Document (8) relates to the provision of a unitised dose form which can be used in a machine dishwashing method for cleaning dishware/tableware and does not present the drawbacks of tablets (page 3, lines 3 to 11).

Therefore, also the Board takes document (8) as the most suitable starting point for the evaluation of inventive step.

Document (8) does not address specifically the problem of the simultaneous delivery of incompatible ingredients and ingredients in different physical forms from a dispenser of a dishwashing machine.

The technical problem underlying the invention thus can be defined in the light of document (8) as the provision of an alternative method of dishwashing by using a unitised dose form which is capable of fitting the dispensers of different dishwashing machine types and allows for the simultaneous delivery of incompatible ingredients and ingredients in different physical forms (paragraph 8).

The Board finds that the technical problem indicated above has been credibly solved by means of a method having the technical features of claim 1.

In fact, even though Opponent 01 submitted that the known dishwashing machines would not allow the use in the dispenser of pouches having a volume of 70 ml, which is the upper limit indicated in claim 1, but only of smaller pouches, this submission has not been supported by any written or oral evidence and thus cannot be accepted by the Board. To the contrary, the list of dishwashing machines submitted by Opponent 01 with its late submissions of 15 July 2009 reports some dishwashing machines having a dispenser having a volume of 70 ml or greater (see table 1, page 1, fifth machine from the top and page 2, tenth and eleventh from the top and the one listed last). The Board thus has no reason to assume that the above mentioned technical problem has not been solved throughout the extent of claim 1.

Furthermore, the additional technical problem of providing an automatic dishwashing method whereby incompatible deterative components could be **stably held** and delivered to the main wash cycle of the automatic dishwasher, addressed in the decision under appeal and by the Appellant in its statement of the grounds of appeal, is in the Board's view only a desirable embodiment of the invention as explained in paragraphs 153 and 154 of the patent in suit; however, it is not a requirement of the method of claim 1 to include means for avoiding a premature leaking of some pouch content. This fact has also no bearing on the technical problem underlying the invention indicated above which regards only the suitability of the unitised dose form fitting in any dispenser of a dishwashing machine and for

simultaneously delivering incompatible ingredients and ingredients having different physical form.

Therefore, this additional technical problem should be disregarded in the discussion of inventive step; for this reason, the Laura Mowbray's experimental report submitted by the Respondent with respect to the solution of this technical problem is not relevant to the present case and can be disregarded too.

4.2.3 Document (8) discloses a method of washing dishware/tableware in an automatic dishwashing machine using a machine dishwashing product in the form of a water-soluble pouch which is filled with a detergent composition for cleaning dishes, which product can be placed within the dishwashing machine dispenser and thus may be released during the main dishwashing cycle (see page 3, lines 12 to 21; page 3, line 44 to page 4, line 25).

This document relates also to a method for cleaning and degreasing the dishwashing machine itself wherein the pouch is placed within the basket of the dishwashing machine (page 3, lines 17 to 19 and page 4, lines 50 to 52) and it discloses that the pouch can have more than one compartment for incorporating further treatment compositions (page 5, lines 1 to 6).

However, it does not explicitly teach that a pouch containing at least two compartments can be used in the dispenser of the dishwashing machine in a method for cleaning dishes/tableware.

Therefore, in the Board's view, the method disclosed in document (8) differs from that of claim 1 insofar as



(a) the used pouch has a first compartment comprising a liquid composition and a second compartment comprising a powder composition;

(b) said compartments are in generally superposed relationship;

(c) the weight ratio of the liquid to the solid composition is from 1:30 to 30:1;

(d) the pouch has a volume of from 5 to 70 ml and a longitudinal/transverse aspect ratio in the range from 2:1 to 1:8;

(e) the pouch having at least two compartments is placed within the dishwashing machine dispenser and released during the main cycle of a dishwashing process.

4.2.4 **Feature (e)**- It is undisputed that document (8) teaches the use of multi-compartments pouches. Moreover, even though the only specific example concerning the use of such type of pouches concerns indeed the cleaning and degreasing of the dishwashing machine itself and the use of the pouch in the basket of the dishwashing machine, as explained by the Appellant (see document (8), page 5, lines 7 to 20), the Board remarks that this embodiment is indicated as being only one example of a possible use of the multi-compartment pouches. Therefore, since document (8) relates also to the use of smaller pouches in the dispenser of a dishwashing machine for cleaning dishware, document (8) contains a clear suggestion for the skilled person that he can use with success pouches having more than one compartment also for this embodiment, i.e. directly in the dispenser of a dishwashing machine for being delivered in the main wash of a dishwashing cycle.

**Feature (a)**- As regards the use of liquid detergent ingredients in one compartment and a solid powder detergent ingredient in a second compartment, it cannot be disputed that both liquid and solid detergent ingredients for use in dishwashing were known at the priority date of the patent in suit as acknowledged in the patent in suit (see paragraph 6). Document (8) already suggests that different detergent ingredients which have different purposes can be used in the different compartments (page 5, lines 1 to 2). Therefore, it would have been obvious for the skilled person to try any known detergent ingredient suitable for dishwashing and also those having different physical form. Moreover, it is directly apparent that since the ingredients will be contained in different compartments, they do not need to be compatible with each other for being simultaneously dispensed during the main washing cycle. The fact that the Respondent has been unable according to its submissions to prepare a unitary product in gel form stably incorporating both liquid and solid ingredients is not relevant to the present case as document (8) contains the suggestion to use pouches having at least two compartments containing different compositions.

**Feature (c)**- Furthermore, it is undisputed that the use of a specific weight ratio of the liquid to solid composition within the broad range of claim 1 does not bring about any technical effect. Therefore, it would have been obvious for the skilled person to adapt the amount of the detergent ingredients within this broad range according to his needs and to the size of the compartments.

**Feature (b)**- As regards the technical feature that the compartments of the pouch are generally superposed, this feature requires that the compartments have a wall in common, as submitted by the Respondent during oral proceedings. No other definition can be found in the patent in suit apart from a suggestion that the compartments can be symmetrically arranged one above the other (see paragraph 17). However, as explained in the patent in suit (paragraph 17), this technical feature is only of advantage when moisture-sensitive ingredients are contained in any of the liquid or solid composition, which is not a requirement of claim 1 according to the main request. Therefore, this technical feature does not contribute in any way to the solution of the above mentioned technical problem.

Furthermore, document (8) teaches that the multicompartment pouches can be formed by positioning a pouch inside another, wherein the inner pouch can be bound to the wall of the outer pouch. Therefore, in such a case the two compartments would have a wall in common and they must be considered to be at least partially superposed as required in claim 1. Document (8) thus also suggests the skilled person to try this specific type of arrangement of the compartments.

**Feature (d)**- The Board remarks that the size and form of the dispensers of the dishwashing machines available on the market were certainly known to the skilled person (see e.g. paragraph 3 of the patent in suit) and that, as acknowledged in the patent in suit (paragraph 4) it was common general knowledge how to adapt the size of a detergent tablet to such dispensers.

Therefore, the skilled person would have necessarily selected a pouch of a suitable size for applying the dishwashing method of document (8). Therefore, he would have also selected a volume and a longitudinal/transverse aspect ratio within the limits indicated in claim 1, since it is undisputed that these technical features have the only goal to fit the pouch to most of the available dishwashing machines (see paragraph 18 of the patent in suit).

The Board concludes that the skilled person, faced with the above mentioned technical problem of providing an alternative method of dishwashing by using a unitised dose form which is capable of fitting the dispensers of different dishwashing machine types and allows for the simultaneous delivery of incompatible ingredients and ingredients in different physical forms, would have arrived to the subject-matter of claim 1 by following simply the teaching of document (8) and using his common general knowledge.

Therefore, the subject-matter of claim 1 does not amount to an inventive step.

5. *Respondent's first to third auxiliary requests*

Since the first to third auxiliary requests contain the same claim 1 as the main request, these requests lack mutatis mutandis an inventive step.

6. *Respondent's fourth auxiliary request*

6.1 Articles 123(2) and (3) EPC; Novelty

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

Since neither the Appellant nor Opponent 01 raised any objection in this respect no further details are necessary.

6.2 Inventive step

6.2.1 The set of claims according to the fourth auxiliary request does not contain any claim corresponding to the independent claim 1 of the previous requests. This set of claims contains two independent claims, claims 1 and 6 corresponding to claims 3 and 8 of the main request, respectively.

The subject-matters of both claims 1 and 6 differ from the subject-matter disclosed in document (8) insofar as

(a) the used pouch has a first compartment comprising a liquid composition and a second compartment comprising a powder composition,

(b) the compartments are in generally superposed relationship,

(c) the weight ratio of the liquid to the solid composition is from 1:30 to 30:1, and

(e) the pouch having at least two compartments is placed within the dishwashing machine dispenser and released during the main cycle of a dishwashing process.

However, these technical features which were also contained in claim 1 according to the main request do not confer inventiveness to the claimed subject-matter as explained in point 4.2.4 hereinabove.

Both claims 1 and 6 differ further from the subject-matter disclosed in document (8) *inter alia* insofar as

(f) the pouch used according to the claimed method comprises upper and lower generally opposing outer walls, a skirt-like side wall and one or more internal partitioning walls.

This particular arrangement and form of the walls, for example such skirt-like side walls, are obtained according to the Respondent because of the use of a thermoforming or a vacuum-forming process or a combination thereof and would not be obtained by means of processes of preparation conventionally used in the prior art such as the so-called vertical form-fill sealing process, a process using die with moulds or the circular drum process (see paragraphs 10 to 16 and 37 of the patent in suit). This has not been contested by the other parties.

This specific arrangement and form of the walls of the pouch do not appear to contribute in any way to the solution of the technical problem underlying the invention identified above (point 4.2.2).

Therefore, it thus should be evaluated only whether it was obvious for the skilled person, starting from the teaching of document (8), to use as alternative a pouch having the characteristic arrangement and form of the walls mentioned hereinbefore.

6.2.2 The multi-compartment product disclosed in document (8) can be composed of pouches bound to each other by means of a seal or of pouches contained one within the other, each single pouch forming a compartment of the product used (page 5, lines 1 to 5). However, this document does not indicate any process of preparation for the pouches used and does not specify the form or arrangement of the walls of the pouches in the final product.

The Opponent 01's submission that thermoforming and vacuum forming processes were known to the skilled person and that such a type of pouch would have been obtained by the skilled person by applying his common general knowledge about suitable methods of preparation for water-soluble pouches has not been supported by any evidence. Similarly, it has not been submitted any evidence that these types of processes were commonly used for preparing pouches suitable for use in the dispenser of a dishwashing machine.

Moreover, even though these processes of preparation would have been known, it has not been convincingly shown that such processes, which can lead to a particular arrangement and form of the walls of the pouch, would have been taken into consideration by the skilled person for preparing a water-soluble pouch for use in the dispenser of a dishwashing machine as used

in document (8) instead of the other known commonly used processes of preparation of the prior art which are, for example, listed in paragraphs 10 to 15 of the patent in suit.

Therefore, the Board finds that document (8) did not contain any motivation for the skilled person, even using his common general knowledge, to look for pouches made by methods which were not those commonly used in the prior art. Therefore, the skilled person would not have used a pouch having, for example, a skirt-like side wall.

Moreover, as already explained above (point 1), the only combination of documents being part of the appeal case is the combination of document (8) with document (1), which combination is not allowable since document (1), having been published after the filing date of the patent in suit, can be state of the art only in virtue of Article 54(3) EPC and is not a state of the art which can be used for discussing inventive step.

The Board concludes that, the skilled person, starting from the teaching of document (8), would not have found any suggestion, even taking into account his common general knowledge, to select a pouch having the characteristic arrangement and form of the walls of claim 1 and 6 according to the fourth auxiliary request for use in the dispenser of a dishwashing machine.

The Board concludes that the subject-matters of claims 1 and 6 amount to an inventive step.



The same thus applies to the subject-matters of the dependent claims 2 to 5 and 7 to 16.

## **Order**

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

The decision under appeal is set aside.

The case is remitted to the Opposition Division with the order to maintain the patent on the basis of the fourth auxiliary request with the description to be adapted.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke