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**Datasheet for the decision  
of 12 November 2010**

**Case Number:** T 0959/09 - 3.3.06

**Application Number:** 04252957.8

**Publication Number:** 1479376

**IPC:** A61K 7/50

**Language of the proceedings:** EN

**Title of invention:**

Personal product compositions comprising structured benefit agent pre-mix providing enhanced deposition of hydrophilic benefit agent

**Applicants:**

Unilever PLC, et al

**Headword:**

Structured benefit agent/UNILEVER

**Relevant legal provisions:**

EPC Art. 123(2), 111(1)

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

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**Keyword:**

"Added subject-matter (no)"  
"Remittal (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0959/09 - 3.3.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.06  
of 12 November 2010

**Appellants:**

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and

Unilever NV  
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**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted 24 November 2008  
refusing European patent application  
No. 04252957.8.**

**Composition of the Board:**

**Chairman:** P.-P. Bracke  
**Members:** L. Li Voti  
U. Tronser

## Summary of Facts and Submissions

- I. This appeal lies from the decision of the Examining Division to refuse European patent application no. 04 252 957.8, relating to a personal product composition.
- II. In its decision, the Examining Division found that each claim 1 of the then pending requests did not comply with the requirements of Article 123(2) EPC.

In particular, it found that the application as originally filed disclosed compositions containing a combination of sunflower seed oil and glycerol in examples 22 to 33 only. However, it did not contain any general teaching which could be used as support for such a combination in a more general composition as required by the pending claims.

- III. An appeal was filed against this decision by the Applicant (Appellant).

With the fax of 12 October 2010 the Appellant submitted an amended set of 5 claims as main request.

The set of claims according to the main request reads as follows:

"1. A liquid personal product composition comprising:

(i) 1% to 75% by wt. surfactant selected from the group consisting of anionic, amphoteric/zwitterionic, nonionic and cationic surfactants, and mixtures thereof,

wherein the anionic component comprises from 1% to 20% by wt. of the composition;

(ii) 0.1% to 90% by wt. of a structured benefit agent delivery vehicle wherein:

(a) 50% to 99.9%, by wt. of the structured delivery vehicle comprises one or more benefit agents; and

(b) 50% to 0.1%, by wt. of the structured delivery vehicle comprises a crystalline structurant or structurants selected from natural and synthetic crystalline waxes;

(iii) hydrophilic benefit agent or agents comprising glycerol;

wherein crystals of the crystalline structurant have an aspect or axial ratio such that length A to width B of the crystals has a ratio  $A/B > 1$ ; the length is to be understood as the longer of the two dimensions when considering both length and width;

wherein the structured benefit agent delivery vehicle is prepared as a pre-mix before being combined with the remaining composition."

"2. A composition according to claim 1, wherein the natural crystalline wax is selected from mineral waxes, petroleum based waxes, plant or vegetable waxes and animal waxes."

"3. A composition according to claim 2, wherein the petroleum based wax is paraffin or microcrystalline wax."

"4. A composition according to claim 1, wherein the synthetic crystalline wax is polyethylene, a polymethylene, a chemically modified wax, polymerized  $\alpha$ -olefins and synthetic animal waxes."

"5. A composition according to any one of the preceding claims, wherein the structured benefit agent delivery vehicle is formed by combining benefit agent and crystalline structurant at temperatures above the melting point of the structurant."

IV. The Appellant submitted in writing *inter alia* that the amended claims were supported by specific passages contained on pages 1 to 4, 6, 7, 21, 23, 28, 31, 32, 34 and 38 of the description of the original application.

V. The Appellant requests that the decision under appeal be set aside and that the case be remitted to the department of first instance for consideration of novelty and inventive step.

## **Reasons for the Decision**

1. *Main request*

1.1 Article 123(2) EPC

1.1.1 The introduction of the application as originally filed discloses that the invention concerns a structured

benefit agent pre-mix or "delivery vehicle" for enhancing the delivery of a separate hydrophilic benefit agent (HBA) comprising, for example, glycerol from a personal product composition and that the structured benefit agent delivery vehicle can be separately prepared as a pre-mix before being combined with the remaining composition (see page 1, lines 5 to 18 and page 6, lines 19 to 26).

Moreover, it discloses that natural and synthetic crystalline waxes are suitable structurants for the carrying benefit agent (page 3, lines 17 to 19).

Therefore, this generic teaching is applicable to the generic liquid composition of the invention outlined on page 7, lines 1 to 27, which also explicitly encompasses the use of natural and synthetic crystalline waxes as structurants.

The original description thus discloses in the above mentioned passages a generic liquid personal product composition comprising:

- (i) 1% to 75% by wt. surfactant;
- (ii) 0.1% to 90% by wt. of a structured benefit agent delivery vehicle wherein:
  - (a) 0.1% to 99.9% by wt. of the structured delivery vehicle comprises one or more benefit agents; and
  - (b) 99.9% to 0.1% by wt. of the structured delivery vehicle comprises a crystalline structurant or structurants selected from natural and synthetic crystalline waxes;
- (iii) hydrophilic benefit agent or agents comprising glycerol;

wherein crystals of the crystalline structurant have an aspect or axial ratio such that length A to width B of the crystals has a ratio  $A/B > 1$ ; the length is to be understood as the longer of the two dimensions when considering both length and width; wherein the structured benefit agent delivery vehicle is prepared as a pre-mix before being combined with the remaining composition.

This disclosure corresponds largely with the wording of claim 1 according to the main request (see point III above) with the exception of the specific surfactants and the specific concentrations of anionic surfactant and of components (ii) (a) and (ii) (b) of claim 1.

1.1.2 The passage bridging pages 9 and 10 of the original description teaches that the composition of the invention, which is preferably a liquid one, typically comprises 1 to 75% by weight of a surfactant system as reported in claim 1 of the main request; moreover, the amount of anionic surfactant contained generally in such a system is reported on page 38, lines 9 to 10 to be 1 to 20% by weight.

Therefore, the Board finds that these technical features of the invention are of general applicability and can be combined with the generic disclosure of a liquid composition reported in point 1.1.1 above.

1.1.3 As regards the amounts of benefit agent (ii) (a) and crystalline structurant (ii) (b) of the structured benefit agent delivery vehicle pre-mix, the detailed description of the invention discloses that the generic respective concentrations of these two components are

those already given for the generic liquid composition of page 7, i.e. 0.1% to 99.9% by weight each and that in some preferred embodiments the concentrations of benefit agent and wax are 50 to 99% and 1 to 50% by weight, respectively (page 28, lines 20 to 25).

Therefore, the description discloses also that concentrations of benefit agent and wax of 50 to 99.9% and 0.1 to 50%, respectively, are applicable to a generic liquid composition of the invention as disclosed in page 7.

The Board concludes that the original description contains support for a composition containing all the features of claim 1 according to the main request.

1.1.4 As regards the dependent claims 2 to 6 support can be found in the following passages of the original description disclosing generic and preferred embodiments of the crystalline waxes and of the pre-mix of the invention which are also applicable to the generic liquid composition of page 7:

- page 21, lines 18 to 19 and page 23, lines 4, 7, 19 and 20 (claim 2);
- page 21, lines 19 and 20 (claim 3);
- page 23, lines 24 to 27 (claim 4);
- page 1, lines 19 to 20 and page 31, lines 1 to 3 (claim 5).



Therefore, the Board concludes that all the claims according to the main request comply with the requirements of Article 123(2) EPC.

2. *Remittal*

In the present case the decision under appeal was based on the ground of lack of compliance with the requirements of Article 123(2) EPC only.

Therefore, it has still to be assessed whether the claims satisfy the other requirements of the EPC, for example, whether novelty and inventive step are involved.

The Board thus finds that in order not to deprive the Appellant of the opportunity to argue the remaining issues at two instances, it is appropriate in the present case to make use of its powers under Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.

The Registrar:

The Chairman:

D. Magliano

P.-P. Bracke