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**Datasheet for the decision
of 30 March 2012**

Case Number: T 1350/09 - 3.3.06

Application Number: 04030420.6

Publication Number: 1516918

IPC: C11D 17/04, B65D 5/52,
B65D 5/42, B65D 5/00,
B65D 81/00

Language of the proceedings: EN

Title of invention:
Detergent package

Applicant:
THE PROCTER & GAMBLE COMPANY

Opponent:
Henkel AG & Co. KGaA

Headword:
Detergent package/PROCTER & GAMBLE

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Extent of opposition"
"Inventive step (main request): no - obvious modification"
"Inventive step (first auxiliary request): yes"

Decisions cited:
T 0737/92, G 0009/91

Catchword:
-



Case Number: T 1350/09 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 30 March 2012

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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
23 April 2009 concerning maintenance of the
European patent No. 1516918 in amended form.

Composition of the Board:

Chairman: P.-P. Bracke
Members: P. Ammendola
U. Tronser

Summary of Facts and Submissions

I. This appeal is from the interlocutory decision of the Opposition Division concerning the maintenance in amended form of European patent No. 1 516 918 related to a detergent package.

II. The granted patent contained seven claims (hereinafter the granted claims) wherein claims 1, 5 and 6 read as follows:

"1. *A display pack comprising a see-through container which contains a plurality of unit-doses of a detergent product in a multiplicity of sensorially distinctive groups, and wherein the groups are distinctive in terms of colour, shape, size, pattern or ornament, or wherein the groups are distinctive in terms of providing a unique sensorial signal such as smell, sound, feel, etc.*"

"5. *A display pack comprising a see-through container which contains a plurality of unit-doses in the form of water-soluble pouches in a multiplicity of sensorially distinctive groups, each pouch comprising a plurality of compartments in generally superposed or superposable relationship, each containing one or more detergent active or auxiliary components, and wherein each 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.*"

"6. A display pack according to claim 5 wherein at least one of the plurality of components comprises a powder composition."

The remaining granted claims 2 to 4 and 7 define preferred embodiments of the display packs according to claim 1 and 5, respectively.

III. An opposition against the patent had been filed on 27 September 2007. In the first page of the opposition letter the Opponent had stated to oppose the patent in its entirety ("*in vollem Umfang*"), in the subsequent pages it had presented arguments directed to demonstrate lack of novelty and lack of inventive step of claim 1 (section of the letter with heading "*Anspruch 1*") and of dependent claims (section of the letter with heading "*Abhängige Ansprüche*").

The Opponent had referred, *inter alia*, to document

(10) = EP-A-0 414 462.

IV. During the opposition proceedings, the Patent Proprietor (hereinafter the Proprietor) had filed, *inter alia*, two sets of amended claims respectively labelled as Main Request and First Auxiliary Request.

The Main Request only differed from the set of granted claims in that the final wording of claim 1 "*etc.*" had been amended into "*etc., wherein the unit-doses are multi-compartment pouches.*".

V. In the decision under appeal the Opposition Division considered that the opposition letter contained a clear

statement that the opposition was made against the patent "*in vollem Umfang*". Hence, and despite the fact that Opponent had not explicitly indicated arguments against claims 5 to 7, the opposition was considered to be against the patent in its entirety.

The then pending Main Request was found to comply with Article 123(2) and 123(3) EPC and its subject-matter to be novel.

However, this request was refused because the subject-matter of claim 1 was found to lack of inventive step.

The reasons given by the Opposition Division for arriving at this conclusion may be summarized as follows:

The closest prior art was considered document (10), which disclosed in Figure 4 two multi-compartment pouches (or unit-doses) of laundry treatment products that would appear distinguishable to the skilled person.

Thus, the difference between the subject-matter of claim 1 of the Main Request and the prior art only resided in the presence of a see-through container. The effect associated with this feature was just the enablement of the consumer to view the content of the package without prior opening. The objective technical problem was therefore identified as how to simplify the use and purchase of packaged deterative products.

Since the use of see-through containers was generally known in the art of packaging, the solution proposed in claim 1 to the posed problem was obvious.

Hence, the set of claims of the Main Request was considered not allowable.

The Opposition Division found instead the set of claims of the then pending First Auxiliary Request to comply with the requirement of the EPC.

- VI. The Opponent (Appellant I) and the Proprietor (Appellant II) appealed against this decision (Appellant I: notice of appeal, appeal fee and grounds of appeal received at the EPO on 24 June 2009. Appellant II: notice of appeal and appeal fee received at the EPO on 2 July 2009 and grounds of appeal received at the EPO on 1 September 2009).

In particular, the Opponent's appeal letter was enclosed with two sets of new documents labelled as Annexes 1 and 2 ("*Anlage 1*" and "*Anlage 2*") containing pictures of products packaged in see-through materials. With this letter the Opponent also raised for the first time objections in view of Articles 52(2)(b) and (d) EPC 1973 as well as in view of sufficiency of disclosure.

- VII. The Proprietor filed with its grounds of appeal eight sets of amended claims respectively labelled as Main Request and First to Seventh Auxiliary Request.

The **Main Request** filed by the Proprietor with the grounds of appeal only differs from the Main request refused by the Opposition Division for the self-evident correction in dependent claim 6 of the manifestly erroneous expression "*the plurality of components*"

(already present in granted claim 6, see above Section II) into "*the plurality of compartments*".

The claims of the **First Auxiliary Request** only differ from those of the Main Request in the deletion in claim 1 of the wording "*or wherein the groups are distinctive in terms of providing a unique sensorial signal such as smell, sound, feel, etc.,*".

VIII. The Board expressed its preliminary opinion in a communication enclosed to the summons to oral proceedings stating, *inter alia*, the following:

"As to the objections raised by the Opponent for the first time in these appeal proceedings in respect of Articles 52 and 100(b) EPC, the Board notes that they are based on reasons that would identically apply to the claims as granted and to the amended claims of the main and of the first auxiliary request already discussed before the Opposition Division. Thus, these objections do not appear occasioned by amendments to the text of the claims only made by the Proprietors during the appeal proceedings and, hence, represent grounds of opposition that are new and belated. Hence, the Board concurs with the Proprietor that these new grounds of oppositions can only be taken into consideration with the agreement of the Proprietor. Since this latter has already refused its approval, the Board is of the opinion that the alleged violations of Articles 52 and 100(b) EPC cannot be discussed at the forthcoming oral proceedings."

IX. The Opponent stated in writing and orally that the original opposition implicitly addressed the patent-in-

suit in its entirety. Indeed, granted claim 5 was implicitly a claim dependent on claim 1, because the former possessed all the features of the latter. Thus, the objections contained in the opposition letter in respect of the dependent claims were also relevant in respect of granted claims 5 to 7.

In the Opponent's opinion claims 1 and 5 of the Main Request lacked of inventive step for substantially the following reasons:

Most of the features of claim 1 were non-technical and resulted in no sufficiently proved technical effect. Hence the assessment of inventive step had to be made by just considering that this claim required the presence in a see-through container of at least two multi-compartment pouches which contained units doses of a detergent product. In particular, the further requirement in this claim that the two or more pouches had to belong to "*sensorially distinctive groups*" (hereinafter this features is also expressed by indicating that the pouches must be **sensorially different**) did not necessarily imply a difference in the chemical composition and/or amount of the detergent products contained in the pouches and, thus, could just provide some esthetical stimulus, e.g. a multiplicity of colours, to the consumer. Nor was any technical advantage implied by the combination of the sensorially different pouches with the see-through container. In particular, the wording of the claim did not imply that the nature or the intensity of the difference in terms of sensorial signals among the pouches had to be perceivable by the consumer from the exterior of the container. This would be particularly evident when

considering that sensorial signals such as "smell" or "feel" could not be appreciated by the consumer just upon looking at the closed container.

The Opponent stressed that document (10) not only disclosed multi-compartment pouches (sachets) containing a unit-dose of detergent products suitable for an average washload, but also suggested the combination of detergent pouches differing in the overall amounts or in the chemical composition of the products contained therein.

Accordingly, the sole technical problem credibly solved over the whole range of claim 1 of the Main Request was the provision for transport and display of the combination of different detergent pouches already known from document (10).

Hence, and in view of the conventional use of transparent containers for transport and display also specifically of detergent products (also supported by the figures in Annex 2), no inventive activity was required to the skilled person for arriving at the subject-matter of claim 1.

Substantially the same reasoning applied to the subject-matter of claim 5 of the Main Request, to arrive at which the skilled person was only additionally required to perform the routine activity of adapting the size of the unit-doses to the dimensions of dishwashing machine drawers.

As to the First Auxiliary Request the Opponent considered no technical effect to necessarily derive

from the fact that claim 1 of this request limited the sensorial distinctions among the pouches to those that are visible, but did not require the same visible differences to also be sufficiently apparent at distance to be perceivable from e.g. the exterior of the container. Hence, the same reasons given against the Main Request applied equally to the First Auxiliary Request.

- X. The Proprietor argued in writing and orally substantially as follows.

The finding in the decision under appeal as to the extent of the opposition was contrary to the restrictive application made in T 737/92 of the principles indicated in G 9/91, according to which an opposition just giving detailed reasoning in respect of a certain independent claim, could only be considered to also implicitly address other claims when these latter were expressly dependent on the one explicitly attacked. Granted claim 5 of the patent-in-suit was however an independent claim. Thus, even if its subject-matter possessed all the features also required in granted claim 1, the scope of these two claims remained different. Accordingly, and since the Opponent's grounds of opposition contained no detailed arguments against the patentability of granted claim 5, it was evident that this claim (as well as the granted claims 6 and 7 dependent thereupon) had never been opposed.

The Opponent's objections raised for the first time in the grounds of appeal represented fresh grounds of opposition which would only be allowable very

exceptionally if they were *prima face* highly likely to prejudice the maintenance of the patent and if the Proprietor agreed to it. However, the Proprietor did not believe that any of these grounds was prejudicial to the maintenance of the patent-in-suit and, thus, denied its consent to the introduction thereof in the appeal proceedings.

The Proprietor stressed that the skilled person would consider unreasonable to interpret the claims of the Main Request and of the First Auxiliary Request as also encompassing display packs in which the same detergent unit-dose was present in pouches that were sensorially different. On the contrary, it would be logical to assume implied in these claims that the sensorially different multi-compartment detergent pouches necessarily contained different detergent unit-doses.

The invention dealt with the technical problem of rendering available to the consumer a display pack of detergent products with the "*improved display attributes*" also mentioned in paragraph [0029] of the patent-in-suit. In particular, it would be apparent to the skilled reader of the patent-in-suit that the claimed display packs rendered easy for the consumer to identify the appropriate unit-dose and, ultimately, to obtain a better washing process. Indeed, the consumer was normally not able to determine the chemical composition or the overall amount of the detergent product forming the unit-dose. Hence, the "*improved display attributes*" manifestly consisted in the fact that the multi-compartment pouches containing the different detergent unit-doses were easily identifiable.

Moreover, as also explicitly stressed in paragraph [0029] of the patent-in-suit, the use of a see-through rendered easy the evaluation of the total amount of unit-doses remaining therein as well as of the remaining amount of each kind of unit-doses, e.g. without requiring to the consumer to take the container off from the shelf and to open it.

Hence, the invention would clearly be a technical solution to a technical problem because it provided a physical configuration to be manufactured and produced for the ultimate use of the consumer. Accordingly, also the features in the claims requiring the groups of unit-doses to be sensorially different and the container to be see-through provided technical effects and had to be considered in the assessment of inventive step.

The Proprietor conceded that the use in general of see-through materials for packaging together sensorially different detergent products was well known. However, see-through containers holding a plurality of detergent pouches, let alone a plurality of different detergent products contained in multi-compartment pouches, were not disclosed in the prior art reported e.g. in Annex 2 or in the other citations made by the Opponent.

Hence, and since only document (10) related to multi-compartment pouches containing detergent unit-doses, the Proprietor concurred with the finding of the Opposition Division that this citation represented the closest prior art.

Nevertheless, the skilled person starting from this prior art could not arrive at claim 1 of the Main Request already because there was no suggestion in document (10) or in the remaining prior art to simultaneously offer to the consumer different detergent unit-doses in the form of sensorially identifiable multi-compartment pouches. Accordingly, claim 1 of the Main Request was inventive over the prior art.

The same reasoning applied to claim 1 of the First Auxiliary Request, which was moreover further limited to display packs that implied even more clearly the possibility for the consumer to easily evaluate the remaining amount for each kind of unit-dose group, e.g. without opening the container.

As to claim 5, identically worded in the Main Request and in the First Auxiliary Request, the Opponent was wrong in ignoring the technical relevance of the additional limitations present in this claim, that rendered the unit-doses of the display pack suitable for dishwashing applications, in particular for dispensing them from the dishwasher drawer into the main wash cycle. The Proprietor stressed that the pouches of this claim were water-soluble, which was also important for dishwashing applications. In the absence of any suggestion to use detergent unit-dose pouches for automatic dishwashing, these additional limitations further supported the inventive step of claim 5 of both the Main Request and the First Auxiliary Request.

XI. The Opponent requested that the decision under appeal be set aside and the patent be revoked.

The Proprietor requested that the decision under appeal be set aside and that the patent be maintained on the basis of the Main Request or one of the First to Seventh Auxiliary Requests all requests submitted with the grounds of appeal.

Reasons for the decision

Procedural issues

1. Extent of the opposition

The Proprietor has disputed the finding in this respect of the Opposition Division by arguing, in essence, that similarly to the case of T 737/92 (unpublished in the OJ of EPO) also in the present case it would be justified a restrictive application of the principles set in G 9/91 (published in OJ 1993, 408).

The Board notes, however, that all the claims of the granted patent are directed to display packs and that the opposition letter refers explicitly not only to "Anspruch 1" but also to "Abhängige Ansprüche" (i.e. to "claim 1" and to "dependent claims"). The Board notes further the undisputed fact that substantially all conceivable embodiments of the display pack defined in the granted claims 5 to 7 (which are formally not dependent from claim 1) appear also to be subject-matter of claim 1 as granted. Hence, the arguments against the patentability of the "dependent claims"

that are given in the grounds of opposition, appear to the Board possibly intended to apply to the claims 2 to 7, independently as to whether these latter are explicitly formulated as dependent from claim 1 or not.

The Board finds that these facts render the present case substantially different from that ruled in T 737/92 (wherein only arguments against process claims and not against composition claims were given) and that they do not justify an interpretation to the contrary of the explicit statement in the first paragraph of page 1 of the opposition letter that the opposition was made against the patent "*in vollem Umfang*" (in its entirety).

Hence, the Board concurs with the Opposition Division that the extent of the opposition embraces all granted claims.

2. Fresh grounds of opposition in respect of Articles 52(2)(b) and (d) EPC 1973 as well as in respect of sufficiency of disclosure.

As indicated in the communication of the Board enclosed to the summons to oral proceedings (see above Section VIII of the facts and submissions), and undisputed by the Opponent at the hearing, these objections are belated grounds of oppositions and, thus, can only be taken into consideration with the agreement of the Proprietor. Since this latter has refused its approval, these alleged violations of Articles 52 and 100(b) EPC 1973 cannot be taken into consideration in the present appeal proceedings.

Main Request

3. Interpretation of claims 1 and 5.
 - 3.1 According to the jurisprudence of the Boards (see the Case Law of the BoA, 6th Ed., 2010, II.B.5.1), the skilled person, when considering a claim, should rule out interpretations which are illogical or which do not make technical sense. He should try, with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation of the claim which is **technically sensible** and takes into account the whole disclosure of the patent.
 - 3.2 The Proprietor has convincingly argued that it is unreasonable to interpret literally the wording of claim 1 of the Main Request (see above Section VII of the Facts and Submissions), i.e. as if this claim could encompass the possibility apparently deprived of any technical relevance, of packaging the same detergent unit-dose in sensorially different pouches. The Board finds that this argument is not only in accordance with a logical and technically sensible interpretation of claim 1 *per se*, but is also supported by the disclosure of the patent-in-suit as a whole and, in particular, by the explicit teaching therein that the sensorial differences among the pouches have the function to render easy for the final consumer to **identify** the pouch (see the patent-in-suit, the passage of [0013] at lines 34 to 35, reading "*the different colour pouches are very easy to **identify** from the exterior*", emphasis added by the Board). In the opinion of the Board, this teaching only makes technical sense if different detergent unit-doses (i.e. unit-doses differing in the

chemical compositions and/or in the overall amount of the detergent product contained therein) are present in the pouches that are sensorially different.

On the contrary, no passage of the patent-in-suit supports the Opponent's allegation that the invention was simply directed to packages with improved aesthetics only. Indeed, in paragraph [0008] "*excellent aesthetics*" is not mentioned *per se*, but rather as an aspect of the need allegedly existing in the prior art "*for multi-compartment pouches with improved strength, handling and dissolution characteristics **as well as excellent aesthetics***" (emphasis added by the Board).

The same reasoning applies to claim 5.

Therefore, the Board concludes that claims 1 and 5 are interpreted by the skilled person as necessarily implying the presence of **different** detergent unit-doses in the sensorially different pouches.

4. Inventive step: claim 1

4.1 In view of the above-reported interpretation, the Board considers the subject-matter of this claim to be a display pack that comprises a see-through container which holds a plurality of sensorially different multi-compartment pouches containing different detergent unit-doses.

4.2 Paragraph [0029] of the patent-in-suit indicates that the present invention aims at rendering available a detergent pack for the storage, distribution and display of combinations of detergent unit-dose pouches

with "*improved display attributes and which makes very easy for the consumer to evaluate the amount of pouches in the pack*". The Board considers convincing the Proprietor's argument, undisputed by the Opponent, that the skilled person would consider inevitably implied by the expression "*improved display attributes*", *inter alia*, the technical problem of rendering **easy** for the consumer **to identify** - and, thus, to choose - the unit-dose more appropriate for the specific washload.

- 4.3 The Board notes that document (10) (see the Figures and claim 1) refers explicitly to laundry detergent products contained in multi-compartment pouches.

Moreover, this document also explicitly mentions the possibility of simultaneously offering combinations of different detergent unit-doses to the consumer, so that this latter can choose the appropriate unit-dose and, thus, obtain a better washing process.

Indeed, and contrary to the Proprietor's submissions, document (10) also teaches:

i) that the content of each pouch (i.e. also of each of the multi-compartment pouches depicted in the Figures of this citation) may be a "*single dose or a submultiple dose*" so as to allow the consumer greater flexibility in varying the amount used, depending on the size and degree of soiling of the washload (see page 12, lines 3 to 26);

and

ii) the possibility of having "a *single or sub-multiple dose of detergent and bleaching composition mixture in one set of sachets, and further bleaching composition contained in another separate set of sachets. That arrangement would enable the consumer to use a lower or higher amount of bleach depending on the level and nature of the soiling of the washload*"(see at page 12, lines 53 to 56).

Hence, the Board finds it reasonable to assess inventive step starting from the teaching in this prior art citation as to the possibility of simultaneously offering to the consumer a combination of different pouches containing different detergent unit-doses, with the explicit scope of rendering possible for the consumer to adapt the washing conditions to the actually existing needs. Hereinafter, this is indicated as **the relevant teaching of document (10)**.

4.4 The Board notes that this relevant teaching also necessarily implies that the pouches of the different groups must be sensorially different.

Indeed, to select the most appropriate pouch necessarily requires the different pouches to be identifiable and, thus, to appear different in some way to the consumer (who, as correctly observed by the Proprietor, cannot normally be expected to be able to determine the chemical composition or the overall amount of the detergent product forming the unit-dose).

Since claim 1 of the Main Request does not set any limit as to the nature of the sensorial signals rendering the pouches' groups distinguishable from each

other (see in claim 1 the definition of the sensorial distinction "*wherein the groups are distinctive in terms of providing a unique sensorial signal **such as** smell, sound, feel, etc.*", emphasis added by the Board), this claim covers all possibly conceivable ways of creating such sensorial distinctions (inclusive, for instance, the printing of e.g. a name, letter or a number on the pouches or the application thereon of a different label, etc.). Thus, even in the absence of any specific disclosure in document (10) of the measures necessarily implied therein in order to render identifiable the pouches containing different detergent products, it is apparent that any possible way of carrying out such teaching of the prior art would also necessarily result in pouches that are sensorially different as required by present claim 1.

In addition, the Board concurs with the Opponent, that claim 1 of the Main Request does not necessarily imply that the distinguishing visible signals can be identified e.g. **from the exterior** of the see-through container (see e.g. in claim 1 of the Main Request "*smell, sound, feel*", but also the fact the wording of the claim does not exclude distinguishing differences in e.g. "*pattern*" or "*shape*" that may become apparent only upon close observation of e.g. the unfolded pouch in isolation). Thus, it is also not credibly solved over the whole scope of the claim the further technical problem presented by the Proprietor as implied in paragraph [0029] of the patent-in-suit (and also possibly implicitly reflected in the passage of paragraph [0013] referred to at point 3.2 above) that, due to the use of the see-through container, the sensorial distinctions could allow the consumer to

evaluate from the exterior of the container the remaining amount for each kind of unit-dose pouches.

Accordingly, the Board finds it not credible that the claimed subject-matter renders **more easy** than the prior art to identify and/or to evaluate the remaining amount of the different detergent unit-doses.

Hence, the Board comes to the conclusion that the sole technical problem credibly solved vis-à-vis the closest prior art by the subject-matter of claim 1 of the Main Request over the whole claimed range is just that (also reflected in paragraph [0029] of the patent-in-suit) of simultaneously transporting and displaying a combination of different detergent unit-doses, thereby **rendering easy for the consumer to evaluate the overall amount of unit-doses available.**

- 4.5 The Board finds, however, that the subject-matter of claim 1 represents a solution to this technical problem that is obvious in view of very same teaching of document (10) and of the common general knowledge in the field of packaging.

In the opinion of the Board, the skilled person aiming at solving the posed technical problem and starting from the relevant teaching in document (10), would necessarily be also aware of the packaging conventionally used for detergent products.

The Opponent has provided ample evidence of the use in the prior art of see-through containers for transporting and displaying detergent products in general (see e.g. in Annex 2 enclosed to the Opponent's

letter of 23 June 2009, *inter alia*, the photo of a transparent package of differently coloured soap bars). This has not been disputed by the Proprietor.

Hence, it was obvious for the skilled person to solve the posed problem by packing **in transparent containers** the combination of (necessarily) sensorially different pouches containing different detergent unit-doses that resulted from any realistic reduction into practice of the relevant teaching of document (10).

To then arrive at the claimed subject-matter the skilled person only needs to take into consideration the possibility of carrying out the relevant teaching of document (10) by using pouches that are **multi-compartment** (rather than being constituted by a single compartment). This amounts to an arbitrary selection, deprived of inventive merits, among the two alternatives equally suggested in the citation of departure. Indeed, the possibility of using multi-compartment pouches is already disclosed in document (10), which explicitly suggests it not only for segregating possibly incompatible components of the same detergent product, but also for the purpose of dividing in sub-doses the detergent mixture (see document (10) page 12, lines 13 to 23).

- 4.6 For these reasons the Board comes to the conclusion that the subject-matter of claim 1 of the Main Request is obvious in view of the combination of document (10) with the common general knowledge in the field of detergent packaging. Hence, this request is found to contravene Article 56 EPC 1973 and, thus, must be refused.

First Auxiliary Request

5. Since this request only differs from the Main Request for the deletion from claim 1 of one of the two alternative definitions for the pouches' sensorial differences (see above at Section VII of the Facts and Submissions), the Board is satisfied that also the First Auxiliary Request complies with Article 54 (1) and (2) EPC 1973 as well as with the requirements of Article 123(2) and (3) EPC.

6. Inventive step: claim 1
 - 6.1 The Board notes that claim 1 of this request has been limited to display packs wherein the groups of multi-compartment pouches must be different in their "*colour, shape, size, pattern or ornament*" (i.e. the claim requires visible differences among the pouches). However, the Board concurs with the Opponent that also this limitation does not necessarily imply that the visible differences must also be immediately perceivable by the consumer **from the exterior** of the see-through container, e.g. without taking this latter off from the shell and without opening it.

 - 6.2 Thus, also for claim 1 of the First Auxiliary Request the assessment of inventive step boils down to the question whether the person skilled in the art aiming at solving the same technical problem identified above (at point 4.4) and starting from the relevant technical teaching of document (10) would have arrived at the claimed subject-matter without exercising inventive ingenuity.

The Board notes that (differently from the case of claim 1 of the Main Request) it cannot be assumed that any reasonable reduction into practice of the relevant technical teaching of document (10) would inevitably result in a combination of pouches as that present in the container of the presently claimed display pack. Indeed, in the absence of any specific disclosure in this citation as to the nature of the (necessarily implied) differences required for rendering identifiable the different pouches, the skilled reader of document (10) has no reason to presume that the pouches of this prior art must necessarily differ in their colour, shape, size, pattern or ornament (rather than e.g. in that they might have been printed or labelled with their chemical composition or with use instructions or rendered sensorially different by their smell, or feel, etc.).

Hence, to arrive from the prior art of departure to the subject-matter of claim 1 of the First Auxiliary Request, the skilled person needs some suggestion as to the possibility of carrying out the relevant teaching of document (10) by using pouches that (beside being multi-compartment) are sensorially different in their colour, shape, size, pattern or ornament.

The Board stresses again that document (10) is totally silent as to the nature of the sensorial distinctions (implicitly required for) rendering distinguishable the different detergent unit-dose pouches in the combination thereof suggested in this citation.

Moreover, the other prior art cited by the Opponent is

found **not** to refer at all to combinations of pouches containing different detergent unit-doses.

Hence, the Opponent has not succeeded in rendering credible that the skilled person starting from the relevant instruction in document (10) would consider obvious to carry out such teaching (also) by using pouches of different colour, shape, size, pattern or ornament.

Thus, the Board finds that the subject-matter of claim 1 of the First Auxiliary Request cannot possibly descend in an obvious manner from the available prior art.

7. Inventive step: claim 5

7.1 This claim differs from claim 1 of the same request (see above Section VII of the Facts and Submission), *inter alia*, in that the former specifies the volume and aspect ratio of the pouches and requires the multi-compartment pouches to be water-soluble and to have their compartments in generally superposed or superposable relationship.

7.2 The Board notes that document (10) undisputedly refers to laundry treatment products only and does not disclose pouch dimensions as those defined in present claim 5.

Moreover, the Opponent has not disputed the Proprietor's argument that the above-identified claim features are necessary to render the multi-compartment pouches of this detergent pack particularly suitable

for fitting in the drawers of dishwashing machines. This Party has only argued that to arrive at these additional features the skilled person would only need to carry out a conventional adaptation of the multi-compartment pouches disclosed in document (10).

However, in the absence of any evidence that multi-compartment water-soluble pouches had already been used for delivering detergent unit-doses in automatic dishwashing, it cannot be considered obvious for the skilled person starting from document (10) to arrive at the subject-matter of claim 5 of the First Auxiliary Request.

Thus, also the subject-matter of this claim is not rendered obvious by the cited prior art.

8. Inventive step: claims 2 to 4 and 6 and 7

Since these claims of the First Auxiliary Request define preferred embodiments of the display packs of claims 1 and 5 respectively, the same reasons indicated above for the finding that the available prior art does not render obvious the subject-matter of claims 1 and 5, apply also to the subject-matter of claims 2 to 4 and 6 and 7, respectively.

Hence the Board concludes that the First Auxiliary Request also complies with the requirements of Article 56 EPC 1973 and, hence, is allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Opposition Division with the order to maintain the patent on the basis of the First Auxiliary Request submitted with the grounds of appeal and a description to be adapted thereto.

The Registrar:

The Chairman:

D. Magliano

P.-P. Bracke