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**Datasheet for the decision  
of 6 July 2011**

**Case Number:** T 0298/10 - 3.3.07

**Application Number:** 04030692.0

**Publication Number:** 1547574

**IPC:** A61K 8/34

**Language of the proceedings:** EN

**Title of invention:**  
Hair cosmetic compositions

**Patent Proprietors:**  
KAO CORPORATION

**Opponents:**  
Henkel AG & Co. KGaA

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 56

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

**Keyword:**  
"Inventive step - main request (yes)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0298/10 - 3.3.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.07  
of 6 July 2011

**Appellants:** Henkel AG & Co. KGaA  
(Opponents) VTP Patente  
D-40191 Düsseldorf (DE)

**Representative:** -

**Respondents:** KAO CORPORATION  
(Patent Proprietors) 14-10, Nihonbashikayabacho  
1-chome Chuo-ku  
Tokyo 103-8210 (JP)

**Representative:** Hoffmann Eitle  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
11 December 2009 concerning maintenance of the  
European patent No. 1547574 in amended form.

**Composition of the Board:**

**Chairman:** G. Santavicca  
**Members:** D. Semino  
M-B. Tardo-Dino

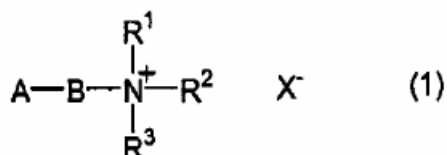
## Summary of Facts and Submissions

I. The appeal of the opponents lies against the interlocutory decision of the opposition division, announced at the oral proceedings on 8 October 2009, concerning the maintenance of European patent No. 1 547 574 in amended form. The granted patent comprised 5 claims, claim 1 reading as follows (the sole amendment with respect to claim 1 as filed is indicated in bold):

" 1. An **aqueous** rinse-off type hair cosmetic composition comprising the following ingredients (A), (B), (C) and (D):

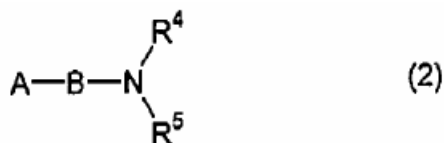
(A) from 1 to 10 wt% of a higher alcohol having from 12 to 28 carbon atoms,

(B) a quaternary ammonium salt represented by the following formula (1):



wherein A represents a hydrogen atom or a linear or branched, saturated or unsaturated amido, N-hydrocarbylcarbonyl, acyloxy or hydrocarbyloxy group having from 12 to 28 carbon atoms in total, B represents a divalent, linear or branched, saturated or unsaturated hydrocarbon group having from 1 to 22 carbon atoms, at least one of R<sup>1</sup>, R<sup>2</sup> and R<sup>3</sup> represents a linear or branched alkyl or alkenyl group having from 1 to 24 carbon atoms in total and the remaining one or ones of R<sup>1</sup>, R<sup>2</sup> and R<sup>3</sup> each independently represents an alkyl group having from 1 to 3 carbon atoms, and X<sup>-</sup> represents a halide ion or an organic anion; or a tertiary amine type compound or a salt thereof, said

tertiary amine type compound being represented by the following formula (2):



wherein A and B have the same meanings as defined above, and R<sup>4</sup> and R<sup>5</sup> each independently represents an alkyl group having from 1 to 4 carbon atoms, (C) from 15 to 70 wt% of a polyhydric alcohol, and (D) from 0.01 to 10 wt% of a dimethylpolysiloxane; wherein a content ratio of said ingredient (A) to said ingredient (B) in the range of from 1:1 to 10:1 in terms of molar ratio."

- II. The patent was opposed in its entirety on the grounds of lack of novelty, lack of an inventive step, insufficiency of the disclosure and extension of the subject-matter beyond the content of the application as filed, as set out in Article 100 EPC, paragraphs (a), (b) and (c).
  
- III. The decision under appeal was based on the patent as granted (main request) and on a set of claims filed with letter of 8 September 2009 as auxiliary request I, in which a single amendment to claim 1 had been made by limiting the quantity of ingredient (C) to the range "from 25 to 70 wt%" (compared to "from 15 to 70 wt%" as defined in granted claim 1).

In the decision under appeal the following documents were *inter alia* cited:

D1: EP-A-0 682 935;  
D2: WO-A-00/38621;  
D3: WO-A-01/08654;  
D4: WO-A-03/037280;  
D6: EP-A-1 366 755;  
D9: DE 295 16 226 U1;  
D11: EP-A-1 118 319.

IV. The decision under appeal can be summarised as follows:

- (a) The addition of the qualifier "aqueous" to the wording of claim 1 did not extend the claimed subject-matter beyond the content of the application as filed.
- (b) The invention as defined in granted claim 1 was sufficiently disclosed.
- (c) The composition of granted claim 1 was novel with respect to D1 in view of the value of the molar ratio between the ingredient (A) and the ingredient (B), with respect to D2 in view of the presence of water, with respect to D3 in view of the quantity of polyhydric alcohol and with respect to D4 in view of the presence of water.
- (d) The composition of granted claim 1 did not involve an inventive step with respect to the closest prior art D6, since neither an effect related to the replacement of a monohydric alcohol with a polyhydric one, nor one related to the choice of a molar ratio between the ingredient (A) and the ingredient (B) below 10:1 had been proven, so that it was obvious for a skilled person looking for

further hair conditioning compositions to undertake the claimed measures in view of the state of the art; inventive step was lacking also when starting from D9 as the closest prior art.

- (e) Auxiliary request I did not raise any further issue under Articles 123 and 54 EPC.
- (f) The composition of claim 1 according to auxiliary request I, which was limited to a content of polyhydric alcohols of from 25 to 70% by weight was inventive with respect to both D6 and D9 taken as the closest prior art, since the submitted comparative data convincingly showed an improvement in preventing dye bleeding related to the use of higher quantities of polyhydric alcohols. The skilled person would not find a suggestion in the available prior art that an increased amount of polyhydric alcohol provided that effect.

V. The opponents (appellants) appealed against that decision. With the statement setting out the grounds of appeal they enclosed the abstract and a computer generated translation of Japanese patent application D13 (JP-A-09 020625). Only lack of inventive step was argued in that statement. Translation of D13 into German (D13') was submitted by the opponents with letter of 30 May 2011.

VI. The patent proprietors (respondents) submitted with their reply to the statement setting out the grounds of appeal 3 set of claims as auxiliary requests I, II and III respectively. In that reply they mentioned an

experimental report allegedly comparing the claimed product with the composition of example 4 of D6, which report was, however, only filed with a further letter dated 7 March 2011. With letter of 3 June 2011 the patent proprietors submitted a translation of D13 into English (D13").

VII. Oral proceedings took place on 6 July 2011. The decision of the Board was announced orally at the end of those proceedings.

VIII. The arguments of the appellants (opponents) can be summarised as follows:

- (a) D6 was correctly considered as the closest prior art document in the decision under appeal, due to the similarity of the composition and of the purpose, although the conclusions drawn on D6 were not correct. The ingredient indicated as solvent in D6 could be a polyhydric alcohol, such as diethylene glycol and benzyl glycerol, and its quantity was not limited in the whole of the disclosure to the quantity mentioned in the general part of the description (20% by weight), since in example 4 a total of 25% by weight of solvent (ethanol and benzyloxyethanol) was present. Moreover, the ratio of the ingredients A and B was not relevant for the assessment of inventive step, since no effect related to its value had been proven. The composition of claim 1 differed from the one of example 4 of D6 only in that polyhydric alcohols were chosen as solvent.

- (b) The problem of reducing the bleeding of dyes while maintaining favourable conditioning properties had already been solved in D6, so that the effectively solved technical problem of the patent in suit could be seen only in the provision of a further conditioning composition.
- (c) D11 disclosed a cosmetic composition, which prevented colour fading of dyed hair, containing up to 50% by weight of a polyhydric alcohol. The additional essential ingredients of the composition of D11 were not excluded in the composition of the patent in suit. D13 taught that specific polyhydric alcohols were effective for conditioning and preventing fading of the colour of dyed hair when used in quantities up to 30% by weight. The composition according to example 5 of D13, in particular, contained 25% by weight of polyhydric alcohols (phenyl ethylene glycol and 1,3-butylene glycol) together with 2% by weight of cetanol and 0.1% by weight of stearyl trimethyl ammonium chloride; no change in colour was observed after its application. In view of the disclosures of D11 and D13 the skilled person looking for further conditioning compositions would include polyhydric alcohols in a quantity of at least 25% by weight in the composition of example 4 of D6, so as to obtain the claimed composition without exercising any inventive activity.
- (d) Lack of inventive step would similarly result by starting from the composition of D11 as the



closest prior art and combining it with the disclosure of D13.

IX. The arguments of the respondents (patent proprietors) can be summarised as follows:

- (a) The general disclosure of D6 was the most reasonable starting point to evaluate inventive step and not a specific example (example 4) which was in contradiction with it. According to the general disclosure of D6 the amount of higher alcohol used as solvent was limited to 20% by weight and no information was available with regard to the molar ratio between the higher alcohol and the quaternary ammonium salt.
- (b) The examples in the patent in suit and the comparative tests filed during opposition and appeal proceedings showed that the problem posed in the patent in suit, namely to improve both the prevention of bleeding of the hair colorant and the smoothness of the hair, had been effectively solved by the claimed composition. No counter-test had been filed by the appellants to show that it was not the case.
- (c) D6 taught away from using more than 20% by weight of polyhydric alcohols. D11 mentioned the use of 1 to 50% by weight of polyhydric alcohols for improving the stability of the composition, but gave no information regarding any favourable effect on dye bleeding prevention at the upper end of that range. D13 mentioned the use of 1 to 30% by weight of specific polyhydric alcohols, but the

preferred quantity was 1 to 10% and no improvement was shown at higher values. Indeed the composition of example 5 of D13, which contained 20% by weight of phenyl ethylene glycol, had no better performance than the one of example 2, which contained 5% by weight of the same alcohol. The presence in example 5 of 1,3-butylene glycol was not relevant, since no effect had been ascribed to it. Moreover, no information was available regarding the molar ratio of components A and B, which was outside the claimed interval in the examples of D13. Therefore, the presence of an inventive step had to be acknowledged.

- (d) Even if the skilled person started from example 4 of D6, an improvement should be recognised in view of the comparative tests filed in the appeal proceedings, so that the same conclusion should be acknowledged.
- (e) An inventive step attack starting from D11 would not be successful either, since D11 did not contain any information about several essential ingredients of the composition of claim 1 (ingredients A and B together with their ratio, in particular). Moreover a combination of D11 with D13 would not be reasonable, since the use of the polyhydric alcohols of D13 was undesired in D11.

X. The appellants (opponents) requested that the decision under appeal be set aside and the European patent be revoked.

XI. The respondents (patent proprietors) requested that the appeal be dismissed or, alternatively, that the patent be maintained on the basis of one of the sets of claims of the three auxiliary requests submitted with the response to the statement of grounds of appeal with letter of 10 October 2010.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The conclusions in the decision under appeal concerning the grounds of opposition under Article 100 EPC, paragraphs (b) and (c) and novelty have not been challenged in the substance by the appellants, so that they do not need to be reviewed by the Board.
3. The appellants contested instead the finding that the composition of claim 1 according to auxiliary request I filed during opposition proceedings with letter of 8 September 2009 involved an inventive step. Since the respondents request dismissal of the appeal, i.e. maintenance of the patent according to auxiliary request I filed with letter of 8 September 2009, that request becomes the main request of the respondents in the appeal proceedings and its inventiveness is to be decided upon.

#### *Closest prior art*

4. The closest prior art for the purpose of assessing inventive step is generally that which corresponds to a purpose or objective similar to that of the invention

and requiring the minimum of structural and functional modifications (Case Law of the Boards of Appeal of the EPO, 6th edition, 2010, I.D.3.1). Since the parties have indicated D6 and D11 as the closest prior art documents, the Board needs to decide which of D6 and D11 fulfils the above mentioned criteria for assessing inventive step.

- 4.1 The patent relates to rinse-off type hair cosmetic compositions containing a polyhydric alcohol and a cationic surfactant, which are used after or before shampooing coloured hair to prevent the bleeding of the colorant from the coloured hair during shampooing (paragraph [0001]).
- 4.2 D6 relates to a treatment composition which reduces bleeding of acidic dyes from hair coloured permanently or semi-permanently with dyeing agents containing acidic dyestuffs (paragraph [001]).
- 4.2.1 It discloses a conditioning composition in the form of an aqueous emulsion for reducing bleeding of anionic dyes from coloured hair comprising:
- at least one fatty alcohol, and
  - at least one emulsifier, and
  - at least one cationic conditioning agent, and
  - at least one organic solvent at a concentration of above 5% by weight, and
  - at least one acidic compound selected from organic or inorganic acids or their mixtures (claim 1).
- 4.2.2 In D6 typical examples of used fatty alcohols are myristyl alcohol, palmityl alcohol, cetyl alcohol and cetearyl alcohol (which are higher alcohol having from

12 to 28 carbon atoms) used in a concentration which is usually less than 20%, preferably less than 15% and more preferably less than 10% by weight (paragraph [0010]).

- 4.2.3 Suitable cationic surfactants and conditioning agents (paragraph [0020]) can be long-chain quaternary ammonium compounds, which can be used alone or in admixture with one another, such as cetyl trimethyl ammonium chloride, dimethyl diethyl ammonium chloride, trimethyl cetyl ammonium bromide, stearyl trimethyl ammonium chloride (which fall under formula (1) of claim 1 of the patent in suit) among others.
- 4.2.4 The solvents of D6 are used as solubilizers, but at the same time enhance penetration of the anionic dyes into the hair, which is necessary in order to achieve intensive long lasting colorations. These "penetration enhancers" can be benzyloxyethanol, benzyl alcohol, phenoxy ethanol, phenoxy isopropanol, methyl phenoxy ethanol, benzyl glycerol, N-benzyl formide, benzyl urea, N-methyl pyrrolidone, N-ethyl pyrrolidone, cinnamyl alcohol, phenethyl-alcohol, p-methyl benzyl alcohol, butyl cellosolve, methyl carbitol, ethyl carbitol, propyl carbitol, butyl carbitol, diethylene glycol, diethyl ether and dipropylene glycol diethyl ether. Especially preferred ones are ethanol, benzyloxyethanol and benzyl urea (paragraph [0031]). Concentration of those solvents is at least 5%, preferably at least 7,5% by weight. In any case the solvent content of the composition of D6 should not exceed 20%, preferably 15% by weight (paragraph [0032]).

4.2.5 The compositions according to D6 can contain other type of known hair conditioning agents, such as silicone oils, e.g. polydimethylsiloxane (paragraph [0036]).

4.2.6 Examples 1 to 5 (paragraphs [0041] to [0049]) of D6 disclose compositions including among others cetearyl alcohol (10% by weight in examples 2 and 3, 12% by weight in the others), 0.8% by weight cetrimonium chloride (with additionally 0.5% by weight behentrimonium chloride in example 4) and 1.5% by weight silicone oil. As solvent 15% by weight ethanol is used in admixture with 5% by weight benzyl alcohol (examples 1, 2 and 5), 2% by weight benzyl urea (example 3) and 10% by weight benzyloxyethanol (example 4).

4.2.7 No information is given in the general disclosure of D6 about any preferred molar ratios between the fatty alcohol and the quaternary ammonium salt. In example 4 the computed molar ratio is 13.35:1 (as calculated in the experimental report of the respondents filed with letter of 7 March 2011 and no longer contested by the appellants). Higher values are obtained for the other examples, which do not contain any behentrimonium chloride.

4.3 D11 relates to a hair treatment composition capable of effectively preventing colour fading and bleeding of dyed hair to thereby maintain the colour for a prolonged period of time (paragraph [0001]).

4.3.1 It discloses a treatment composition for dyed hair which comprises the components (A), (B), and (C), wherein:

(A) is an organic solvent selected from among aromatic alcohols, lower alkylene carbonates, N-alkylpyrrolidones, and formamides;  
(B) is an organic carboxylic acid or a salt thereof;  
and  
(C) is a lower alcohol, a polyhydric alcohol, or a lower alkyl ether of a polyhydric alcohol;  
wherein the pH of the composition falls within the range of 1-6 inclusive, and the composition is dye-free (claim 1).

4.3.2 Examples of the polyhydric alcohols serving as component (C) include alkylene glycols, such as 1,3-butylene glycol, ethylene glycol, diethylene glycol, hexylene glycol, dipropylene glycol, triethylene glycol, and polyethylene glycol (M.W.: 200-5,000), and glycerols such as diglycerol and polyglycerol (paragraph [0015]). The compounds serving as component (C) may be used singly or as a mixture of two or more species, and, to assure stability of the resultant composition, the amount of component (C) to be incorporated into the dyed-hair treatment composition is preferably 5 to 50% by weight, more preferably 10 to 30% by weight, on the basis of the entirety of the composition (paragraph [0016]).

4.3.3 The composition may contain other optional components, including, among others, a surfactant, silicone and higher alcohols (paragraph [0021]).

4.3.4 In particular the compositions of working examples 1 to 9 (Tables 1 and 4) contain 10 (example 1, 2, 3, 4, 8 and 9), 15 (example 6 and 7) or 20% (example 5) by weight of glycols (hence polyhydric alcohols) and 1.5%

by weight silicone (but do not contain any higher alcohol nor any quaternary ammonium salt).

- 4.4 While both D6 and D11 concern hair treatment compositions suitable for reducing bleeding of dyes from coloured hair, the compositions of D6 have undoubtedly more structural similarities with those of claim 1 according to the main request, so that D6 is to be considered as the closest state of the art for assessing inventive step.

*Problem solved*

5. The problem to be solved as addressed in the patent in suit is to provide rinse-off type hair cosmetic compositions, to be used after or before shampooing coloured hair to prevent the bleeding of the colorant upon shampooing, which are also excellent in the smoothness of the hair upon applying the composition and also upon rinsing it out (paragraph [0008]).
- 5.1 D6 too addresses the reduction of bleeding of acidic dyes from coloured hair (paragraph [0001]) and discloses to this effect conditioning compositions, which also improve among other properties the smoothness of the hair (paragraph [0008]). The question therefore arises whether it can be acknowledged that an improvement in these properties is obtained by the claimed composition with respect to those disclosed in D6.
- 5.2 The tests of the report attached to the letter of the respondents dated 7 March 2011 compare the composition of example 4 of D6 (which is the closest embodiment to



the one according to claim 1 of the main request, due to the presence of 25% by weight of solvent) with 2 further compositions (identified as comparative example 1 and comparative example 2) and with a composition according to claim 1 of the main request.

5.2.1 In these tests both the bleeding of colorant from hair and the hair smoothness (upon applying hair cosmetic composition and upon rinsing) are measured. Comparative example 1 differs from example 4 of D6 in that the amount of cetearyl alcohol (component A) has been decreased to 10% by weight and the amount of behentrimonium chloride (component B) has been increased to 0.65% by weight in order to have both the quantity of component A and the molar ratio A:B in the ranges according to claim 1 of the main request. Comparative example 2 differs from example 4 of D6 only in that glycerin (a polyhydric alcohol) replaces ethanol and benzyloxyethanol as solvent. In the last example (according to claim 1 of the main request) the changes of both comparative example 1 and 2 are made.

5.2.2 While for comparative example 1 a minimal change in colorant bleeding and no change in smoothness are observed, for comparative example 2 the bleeding is significantly reduced and the smoothness relevantly improved. When both changes in the composition are made at the same time, as according to the invention, colorant bleeding remains at the very good level of comparative example 2 (actually it still decreases marginally) and the smoothness is further improved.

5.3 The tests in examples 1 to 8 in the patent in suit (Table 5) show the effect of an increase in the

quantity of polyhydric alcohol (glycerine) at and above 25% by weight. It is evident from the results that the increase in the quantity of glycerine at and above 25% by weight corresponds to a reduction of colorant bleeding from hair while maintaining smoothness at good to very good levels.

- 5.4 While the tests in the comparative report offer a direct comparison with the composition of example 4 of D6, the ones available in the patent can be taken as a comparison with the general disclosure of D6, which limits the quantity of solvent to a maximum of 20% by weight. In both cases an improvement with respect to a composition according to D6 has been shown.
- 5.5 No further tests are available on file. In particular the appellants have not provided any tests which could cast doubts that the improvements are obtained over the whole breadth of claim 1.
- 5.6 For these reasons the Board arrives at the conclusion that both starting from the general disclosure of D6 and from the specific composition of example 4 of D6, the technical problem effectively solved by the claimed compositions over those of D6 is to provide a hair cosmetic composition which further reduces the bleeding of the colorant upon shampooing and improves the smoothness of the hair upon applying the composition and also upon rinsing it out.

*Obviousness*

6. It remains to be decided whether the skilled person starting from D6 and looking for a solution to the

posed problem would arrive in an obvious manner at the claimed composition.

6.1 In D6 itself no weight is given to the choice of the molar ratio A:B, nor to the choice of polyhydric alcohols as solvents. In particular, it is even questionable whether polyhydric alcohols are disclosed at all in D6. In the examples of D6 no polyhydric alcohol is illustrated. The appellants invoked the list of solvents in paragraph [0031] of D6, which mentions benzyl glycerol and diethylene glycol. However, D6 does not specify whether, as benzyl glycerol, monobenzyl glycerol (which is a polyhydric alcohol) or dibenzyl glycerol (which is a monohydric alcohol) is meant, so that the "benzyl glycerol" of D6 is a generic definition, encompassing, but not necessarily disclosing a polyhydric alcohol. Moreover, the wording "diethylene glycol, diethyl ether" appears in the part of the list where ethers are listed, so that the question arises whether diethylene glycol diethyl ether (i.e. an ether and not a polyhydric alcohol) is actually meant. In any case, since no relevance is given to the choice of these specific solvents, the question whether D6 directly and unambiguously discloses polyhydric alcohols can be left unanswered.

6.2 D13 (all references in what follows refer to the English translation D13") discloses a composition for hair to be applied to dyed hair, comprising 2-hydroxy benzyl alcohol and/or phenyl ethylene glycol (both being polyhydric alcohols) as an agent for preventing fading of the colour of the dyed hair and having a pH of from 2 to 7 (claim 1). The composition prevents fading of the colour of dyed hair and imparts a

conditioning effect to the hair after use, which is sustained for a long period of time (abstract, second paragraph).

- 6.2.1 2-hydroxy benzyl alcohol and phenyl ethylene glycol can be used independently or in combination with each other, and the blending amount thereof is preferably from 0.1 to 30% by weight, more preferably 1 to 10% by weight of the total composition (paragraph [0008]).
- 6.2.2 Examples 1 to 5 (Table 1) disclose compositions comprising 5 to 20% by weight of 2-hydroxy benzyl alcohol and/or phenyl ethylene glycol (alone or in combination), which are characterised by the same satisfactory performances in terms of sustainability of dyed colour, texture of hair after use and sustainability of texture of hair. These composition contain among others 2% by weight cetanol and 0.1% by weight stearyl trimethyl ammonium chloride (which correspond to a A:B molar ratio of 13.9:1) and 5% by weight 1,3-butylene glycol (a further polyhydric alcohol).
- 6.2.3 While it is acknowledged that D6 and D13 address the same issue of avoiding bleeding of acidic dyes, no information is available in the prior art that the addition of the essential ingredients of D13 could further improve the reduction of dye bleeding of the product of D6, which is already developed for that purpose. Moreover, in D13 the effect of the use of the two essential polyhydric alcohols (2-hydroxy benzyl alcohol and/or phenyl ethylene glycol) is apparently independent on the quantity, as long as it belongs to the indicated range, and no relevance is given to the

addition in the examples of a further polyhydric alcohol (1,3-dibutylene glycol). Finally, the A:B molar ratio in the examples of D13 is outside the range in claim 1 of the main request, as in D6, and no relevance is given to the relative quantities of cetanol and stearyl trimethyl ammonium chloride in the composition.

6.3 As to D11, it follows from the analysis of the document above (see point 4.3) that no disclosure is available related to the possible advantages of using quantities of polyhydric alcohols above 25% by weight and no information is available regarding the relevance of the A:B molar ratio (the specific A and B components of claim 1 of the main request are not even mentioned).

6.4 In summary, the available prior art does not provide any hint that, starting from the composition of D6 and aiming at providing a composition with further bleeding reduction and improved smoothness, 25 to 70% by weight polyhydric alcohols and components A and B in a molar ratio in the range from 1:1 to 10:1 should be used. In view of this, the cosmetic composition of claim 1 of the main request is not obvious, hence involves an inventive step, having regard to the available state of the art.

6.5 No other conclusion would be reached by starting from D11 as the closest prior art and attempting to combine its disclosure with the one of D13. In this respect the Board concurs with the submission of the respondents that several ingredients of the composition according to claim 1 of the main request are missing in the disclosure of D11 (see point 4.3) and that the skilled

person would not consider to combine the teaching of D11 with the one of D13 in view of the explicit citation in D11 of the essential polyhydric alcohols of D13 (2-hydroxybenzyl alcohol and phenylethylene glycol) as problematic and therefore undesired (D11, paragraph [0002], last sentence, and paragraph [0003]).

*Final considerations*

7. No other issue needs to be decided upon concerning the main request. Since this request is allowable, there is no need to consider the auxiliary requests of the respondents.

**Order**

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

1. The appeal is dismissed.

The Registrar

The Chairman

S. Fabiani

G. Santavicca