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**Datasheet for the decision
of 5 May 2015**

Case Number: T 0979/12 - 3.3.06

Application Number: 05815415.4

Publication Number: 1797166

IPC: C11D3/00, C11D3/02, C11D3/06,
C11D3/12, C11D3/08, C11D3/10,
C11D3/20

Language of the proceedings: EN

Title of invention:
Surface corrosion protection detergent compositions containing
polyvalent metal compounds and high levels of low foaming,
nonionic surfactants

Patent Proprietor:
The Procter & Gamble Company

Opponents:
Reckitt Benckiser (UK) Limited
Henkel AG & Co. KGaA
UNILEVER N.V. / UNILEVER PLC

Headword:
Automatic dishwashing composition in unit dose form / PROCTER
& GAMBLE

Relevant legal provisions:
EPC Art. 123(2)
EPC R. 99(1)(a)

Keyword:

Admissibility of Opponent 03's appeal (yes) : notice of appeal reporting the name of only one of the two joint opponents - true intention to file the appeal in the name of both joint opponents

Compliance with the requirements of Article 123(2) EPC - all requests (no) : combination of features not directly and unambiguously derivable from the application documents as originally filed

Decisions cited:

G 0003/99, G 0001/12, R 0018/09, T 0296/96, T 0097/98, T 0667/08

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0979/12 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 5 May 2015

Appellant:
(Opponent 03)

UNILEVER N.V.
Weena 455
3013 AL Rotterdam (NL)

UNILEVER PLC
100 Victoria Embankment
London, Greater London
EC4Y 0DY (GB)

Representative:

Boerma, Caroline
Unilever Patent Group
P.O.Box 137
3130 AC Vlaardingen (NL)

Respondent:
(Patent Proprietor)

The Procter & Gamble Company
One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative:

Clarke, Lionel Paul
Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London
EC2A 2ES (GB)

Party as of right:
(Opponent 01)

Reckitt Benckiser (UK) Limited
Dansom Lane
Hull
HU8 7DS (GB)

Representative:

Bowers, Craig Malcom
Reckitt Benckiser
Corporate Services Limited
Legal Department - Patent Group
Dansom Lane
Hull
HU8 7DS (GB)

Party as of right: Henkel AG & Co. KGaA
(Opponent 02) Henkelstrasse 67
40589 Düsseldorf (DE)

Representative: Henkel AG & Co. KGaA
VTP Patente
40191 Düsseldorf (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
16 February 2012 concerning maintenance of the
European Patent No. 1797166 in amended form.**

Composition of the Board:

Chairman E. Bendl
Members: L. Li Voti
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The present appeal is from the interlocutory decision of the Opposition Division concerning maintenance of European patent no. 1 797 166 in amended form.
- II. In their notices of opposition Opponents 01, 02 and 03 had sought the revocation of the patent on the grounds of lack of novelty and/or lack of inventive step of the claimed subject-matter (Articles 100(a), 54 and 56 EPC) and/or of insufficiency of disclosure (Articles 100(b) and 83 EPC).

During the oral proceedings held before the Opposition Division on 2 February 2012, the Patent Proprietor *inter alia* submitted an amended set of claims as auxiliary request 1, claim 1 of which was considered by Opponents 01 and 03 not to comply with the requirements of Article 123(2) EPC.

- III. The Opposition Division found in its decision that the invention was sufficiently disclosed and that the amended claims according to the auxiliary request 1 submitted during oral proceedings complied with the requirements of Article 123(2) EPC, were novel and involved an inventive step over the cited prior art.
- IV. A notice of appeal was filed on 26 April 2012 by Opponent 01. The appeal fee was paid on the same day. However, Opponent 01 did not file thereafter any statement setting out the grounds of appeal.

Moreover, no reply was received to the Board's communication of 23 July 2012 informing Opponent 01 that its appeal had to be expected to be rejected as

inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC.

The Board thus issued on 28 November 2012 an interlocutory decision dismissing Opponent 01's appeal as inadmissible.

- V. A notice of appeal in Dutch was filed on 19 April 2012 by Opponent 03 (hereinafter Appellant); a translation into English was filed on the same day; the appeal fee was paid on 23 April 2012 and a statement setting out the grounds of appeal was filed on 26 June 2012.
- VI. The Appellant submitted in its statement of grounds that the claims found to comply with the requirements of the EPC by the Opposition Division did not comply with the requirements of Article 123(2) EPC and lacked an inventive step.
- VII. In a communication pursuant to Article 15(1) RPBA, dated 27 November 2014, the Board pointed out that Opponent 03's notice of appeal indicated only Unilever N.V. as name of the appellant; the Board then expressed its provisional opinion concerning *inter alia* the unclear party status of Unilever PLC as joint appellant and the admissibility of the appeal as well as the possible lack of compliance with the requirements of Article 123(2) EPC.

In particular, as regards Article 123(2) EPC, the Board remarked (point 2.1, last full paragraph) that "*it appears also questionable whether all the features of claim 1, e.g. a unit dose in powder or granules form, are disclosed in combination in the documents of the application as originally filed, from which the patent in suit has been granted (Article 123(2) EPC)*".

VIII. In its letter of 14 January 2015 the Respondent (Patent Proprietor) submitted that the appeal was inadmissible in view of the Board's comments in writing and that it would submit its own comments at a later stage. Moreover, it maintained its view that the claims allowed by the Opposition Division complied with all the requirements of the EPC. The Respondent also filed eight sets of amended claims to be considered as first to eighth auxiliary request, respectively.

IX. Claim 1 according to the Respondent's **main request**, i.e. claim 1 according to the set of claims found by the Opposition Division to comply with the requirements of the EPC, reads as follows:

"1. An automatic dishwashing detergent composition in unit close form comprising:
a) *from 0.01% to 60% by weight of a polyvalent metal compound wherein said polyvalent metal compound comprises a metal selected from the group consisting of Al, Mg, Co, Ti, Zr, V, Nb, Mn, Fe, Co, Ni, Cd, Sn, Sb, Bi, Zn, and mixtures thereof.*
b) *at least 8%, by weight, of a low-foaming, nonionic surfactant having a cloud point less than 32°C; and*
c) *optionally, at least one adjunct ingredient;*
wherein said composition has a pH in the range of from 7 to 12, as measured by a 1% aqueous solution and wherein the composition is in solids, granules or powder form."

Claim 1 according to the Respondent's **1st auxiliary request** is identical to claim 1 according to the main request.

Claim 1 according to the **2nd auxiliary request** differs from claim 1 according to the main request only insofar as it requires that the amount of component b) is *"greater than 8% by weight"*.

Claim 1 according to the **3rd auxiliary request** differs from claim 1 according to the main request insofar as it requires additionally that the polyvalent metal compound a) *"comprises a salt selected from the group consisting of organic salts, inorganic salts, oxides and mixtures thereof"* and is selected from a list of specific aluminum, magnesium and zinc compounds and mixtures thereof.

Claim 1 according to the **4th auxiliary request** differs from claim 1 according to the 3rd auxiliary request insofar as the polyvalent metal compound a) is selected from a list of specific zinc compounds and mixtures thereof.

Claim 1 according to the **5th auxiliary request** differs from claim 1 according to the main request insofar as the wording *"and wherein the composition is in solids, granules or powder form"* is replaced by the wording *"and wherein the unit dose form is selected from tablets, multi-phase tablets, coated tablets, and combinations thereof"*.

Claim 1 according to the **6th auxiliary request** differs from claim 1 according to the 5th auxiliary request only insofar as it requires that the amount of component b) is *"greater than 8% by weight"*.

Claim 1 according to the **7th auxiliary request** differs from claim 1 according to the 5th auxiliary request insofar as it requires additionally that the polyvalent

metal compound "*comprises a salt selected from the group consisting of organic salts, inorganic salts, oxides and mixtures thereof*" and is selected from a list of specific aluminum, magnesium and zinc compounds and mixtures thereof.

Claim 1 according to the **8th auxiliary request** differs from claim 1 according to the 7th auxiliary request only insofar as the polyvalent metal compound is selected from a list of specific zinc compounds and mixtures thereof.

- X. With a letter dated 9 February 2015 the Appellant submitted with regard to the admissibility of the appeal the following:

"It is submitted that I, being the common representative of the joint opponents as indicated in the EPO online register and during the opposition procedure, at the time of filing the notice of appeal of 19 April 2012 also acted as the common representative of the joint appellants Unilever N.V. and Unilever PLC.

The wording used in the notice of appeal, i.e. reference to Unilever N.V. as opponent, should be understood in relation to the request for the reduction of the appeal fee under Article 14(4) and Rule 6(3) EPC. Because I acted as common representative (for the joint appellants) it is submitted that the party status of Unilever PLC can only be that of joint appellant.

Should the Board be of the opinion that the party status of Unilever PLC is not clear and requires correction, I hereby request a correction under Rule 101(2) EPC in line with G1/12 of the name and address

of the joint appellants on the notice of appeal of 19 April 2012 submitted in the above mention case.

[...]

It is also submitted that Unilever N.V. (as joint party with Unilever PLC) has been requesting fee reductions under Article 14(4) and Rule 6(3) EPC for a long time (more than 25 years). The established practice of the EPO has always been to accept such requests, thereby creating legitimate expectations with Unilever that such requests are acceptable under the EPC."

- XI. In a communication dated 27 February 2015 the Board expressed *inter alia* its provisional opinion that the appeal and the Respondent's auxiliary requests appeared to be admissible.

- XII. With a letter dated 2 April 2015 the Respondent submitted its arguments against the admissibility of the appeal.

- XIII. With a letter dated 29 April 2015 Opponent 01 supported *inter alia* the admissibility of Opponent 03's appeal.

- XIV. Oral proceedings were held on 5 May 2015.

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

Opponents 01 and 02, parties as of right to the proceedings, supported the Appellant's request.

The Respondent requested that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of a set of claims according to any of the 1st to 8th auxiliary request, all of them filed with letter of 14 January 2015.

XV. As regards the admissibility of Opponent 03's appeal the Respondent submitted in substance that

- in order to comply with the ruling of G 0003/99, the joint opponents Unilever N.V. and Unilever PLC had to file an appeal as joint appellants;

- however, the appeal had been explicitly filed in the name of Unilever N.V. only and could not be considered to extend automatically to include the joint opponent Unilever PLC as co-appellant;

- also taking into account the fact that the joint opponent Unilever PLC had not explicitly withdrawn from the proceedings, it was at least unclear from the notice of appeal who should be considered the appellant in the present case;

- in fact, the appeal had been filed deliberately in the name of Unilever N.V. in order to ensure legal certainty to the request for fee reduction according to Rule 6(3) EPC; in fact, when studying the European Patent Register it became apparent that the joint opponents Unilever PLC and Unilever N.V. had filed in the last years nearly half of their appeals in Dutch in the name of Unilever N.V. only in order to benefit from said fee reduction whilst all other cases had been filed in English and in the name of both joint opponents;

- since the true intention of the Appellant was to file the appeal in the name of Unilever N.V. in order to ensure legal certainty to the request for fee reduction, the mention of Unilever N.V. only in the notice appeal could not be considered to represent an

obvious error which can be corrected in the sense of G 0001/12;

- the Opponent 03' appeal thus did not comply either with the ruling of G 0003/99 or with that of G 0001/12 and should be considered inadmissible.

The Appellant submitted in essence that

- Unilever N.V. and Unilever PLC were joint opponents and had a common representative;

- the appeal had been filed by the same common representative;

- Unilever PLC had not notified the EPO to have withdrawn from the proceedings and had thus to be considered as joint appellant as explained in G 0003/99 and R 0018/09;

- therefore, even though the notice of appeal reported Unilever N.V. only as appellant, the appeal had to be understood as having been filed in the name of both joint opponents;

- the reason for having mentioned Unilever N.V. only in the notice of appeal was to make clear that the Appellant was entitled to the fee reduction according to Rule 6(3) and Article 14(4) EPC; in fact, the EPO had always applied a liberal approach in similar cases and had always allowed the fee reduction in Unilever's other appeal cases filed in Dutch, which were mentioned by the Respondent with reference to the European Patent Register;

- hence, there was no doubt that the Appellant's true intention was to file the appeal in the name of both joint opponents; a correction of the name of the Appellant under Rule 101(2) EPC was thus also possible as ruled in G 0001/12;

- the appeal was thus admissible.

Opponents 01 and 02 supported the Appellant's reasoning.

XVI. As regards the compliance of the claims with the requirements of Article 123(2) EPC the Respondent submitted that

- the amended claim 1 according to the main request contained a combination of features of claim 1 of the application as originally filed with some additional features of the original dependent claims; even though such dependent claims referred back to claim 1 only, the skilled person would have understood these claims to be interdependent and would have considered the additional features disclosed in these claims as applicable in combination to the composition of claim 1;

- moreover, all the features of claim 1 at issue were also supported by the description of the application as originally filed;

- in particular, even though the specific types of unit dose forms listed in claim 17 of the original application did not correspond to those chosen for claim 1 at issue, these specific types were indicated only as examples of a unit dose on page 18 of the description; therefore, it was clear to the skilled

person that the original disclosure of the invention extended also to other types of unit dose forms like those chosen in claim 1 at issue, that were described in other parts of page 18;

- in fact, the feature "solids, granular or powder form" was a selection from a list of possible forms for the claimed composition, disclosed on page 18;

- furthermore, the pH range of the composition of claim 1 at issue was the broadest range indicated on page 9 of the original description;

- therefore, the skilled person would have understood from the whole content of the application as originally filed that all the features of claim 1 at issue disclosed in the description could be combined;

- a similar reasoning applied to each claim 1 according to the 1st to 4th auxiliary request;

- each claim 1 according to the 5th to 8th auxiliary request was limited to a composition in a unit dose form selected from tablets, multi-phase tablets, coated tablets and combinations thereof, i.e. to specific solid unit dose forms originally disclosed in claim 17 and on page 18 of the description;

- therefore, all requests complied with the requirements of Article 123(2) EPC.

The Appellant submitted in essence that

- the claims of the original application could not serve as basis for the combination of features of claim 1 according to any of the submitted requests, since the

original dependent claims, like claims 2, 3 and 17, referred back to claim 1 only and were not interdependent;

- moreover, it was clear from the description of the original application that the composition in unit dose form was a particular embodiment of the invention; in this respect, the description disclosed only specific unit dose forms to which each claim 1 according to the main request and according to the 1st to 4th auxiliary request were not limited;

- furthermore, the chosen pH range of claim 1 at issue was disclosed in the original application only as a pH range suitable for some unprecised embodiments and not as a feature applicable to all the embodiments of the invention;

- similar arguments applied to the polyvalent metals chosen in claim 1 at issue and their amounts;

- the examples of the original disclosure did not concern a composition in unit dose form and were thus of no support for the amended claims;

- the specific unit dose forms of claim 1 according to the auxiliary requests 5 to 8 were also not disclosed in the original application in combination with all other features of claim 1;

- therefore, the original application did not contain any disclosure supporting the combination of all the features of each claim 1 according to all the submitted requests, which thus contravened the requirements of Article 123(2) EPC.

Opponents 01 and 02 supported the Appellant's submissions in this respect.

Reasons for the Decision

Admissibility of Opponent 03's appeal

1. A notice of appeal in Dutch against the decision of the Opposition Division was filed with letter of 19 April 2012 by C. Boerma, expressly on behalf of the opponent, Unilever N.V.. The Appellant attached to the notice of appeal a voucher to debit its deposit account with the amount due as appeal fee and filed with letter of the same day a translation into English of the notice of appeal.

It is in this respect undisputed that in opposition proceedings Unilever N.V. and Unilever PLC acted as joint opponents (Opponent 03) and were represented by the same common representative C. Boerma.

- 1.1 According to the reasons of the decisions of the Enlarged Board G 0003/99 (OJ 2002, 347) and R 0018/09, an opposition filed by several persons in common is to be dealt with as an opposition filed by only one party and such a group of common opponents is to be considered as a single party represented by a common representative (see G 0003/99, points 14 and 15 of the reasons) and, should such a group of common opponents file an appeal, they can only do so jointly as a single party acting through their common representative (see G 0003/99, point 17 and R 0018/09, reasons, point 5).
- 1.2 The Board remarks that according to the ruling of G 0001/12 (points 28 and 29 of the reasons), which

fully endorses the decision T 0097/98 (OJ 2002, 183), the true intention of the appellant must be established *"on the basis of the information in the appeal or otherwise on file, i.e. ascertain who must be deemed in all likelihood to have filed the appeal..."*.

As decided in T 0097/98 (point 1.5 of the reasons) *"[i]t can also be presumed that it is the intention of the representative to act in such a way as to ensure that the appeal is admissible in order for it to be dealt with in substance; see in this respect e.g. decision T 920/97 dated 19 December 2000, point 1 of the reasons, where it is stated that in the absence of any clear indication to the contrary a professional representative who was authorised to act for a party adversely affected by a decision and then filed an appeal against this decision must be presumed to be acting on behalf of the same party that he acted for in the first instance proceedings..."*.

Therefore, even though the notice of appeal of 19 April 2012 mentioned only Unilever N.V. as appellant, there is no doubt, in the Board's view, that the true intention of the common representative was to file the appeal in the name of the same party that he acted for during opposition proceedings, i.e. the joint opponents Unilever N.V. and Unilever PLC.

- 1.3 In this respect it must also be noted that according to G 0003/99 (point 3 of the order) *"[i]n order to safeguard the rights of the patent proprietor and in the interests of procedural efficiency, it has to be clear throughout the procedure who belongs to the group of common opponents or common appellants. If either a common opponent or appellant (including the common representative) intends to withdraw from the*

proceedings, the EPO shall be notified accordingly by the common representative or by a new common representative determined under Rule 100(1) EPC in order for the withdrawal to take effect."

In the present case the EPO has not received any notification by the common representative of Unilever N.V. and Unilever PLC that Unilever PLC intended to withdraw from the proceedings.

Therefore, both parties, acting through the common representative, are for the EPO still joint opponents and now appellants.

Hence, the Board cannot follow the Respondent's argument that it would not be clear which party is the appellant in the present case and that the appeal thus would not comply with the requirements of Rule 99(1) (a) EPC.

1.4 As regards the Respondent's argument that the appeal had been filed deliberately in the name of Unilever N.V. in order to ensure legal certainty to the request for fee reduction according to Rule 6(3) EPC and that therefore it was the representative's true intention not to file the appeal also in the name of the co-opponent Unilever PLC, the Board remarks that

- the issue of the entitlement to the reduction of the appeal fee according to Rule 6(3) and Article 14(4) EPC is irrelevant for deciding on the admissibility of the appeal since the Appellant correctly paid the appeal fee in full by attaching a voucher to the letter of appeal and, as an additional step, requested the partial refund of the fee;

- moreover, the representative's true intention in filing the appeal has to be established on the basis of the criteria indicated in point 1.2 above, which, taking the reasoning given *supra* into account, leads without doubt to the conclusion that the representative's true intention was to file the appeal in the name of the joint opponents Unilever N.V. and Unilever PLC.

Therefore, in the Board's view, there is no doubt that in the present case Unilever N.V. and Unilever PLC are joint appellants.

- 1.5 The Board thus concludes that Opponent 03's appeal complies with the requirements of Rule 99(1)(a) EPC and is admissible.

Respondent's main request

- 2. Claim 1 - Compliance with the requirements of Article 123(2) EPC

- 2.1 As regards the compliance of an amended claim with the requirements of Article 123(2) EPC, it is established jurisprudence of the Boards of Appeal of the EPO that any amendment must be directly and unambiguously derivable from the application as originally filed, even though not necessarily being literally supported.

In this respect it was decided, for example, in T 0296/96 (point 3.1 of the reasons) that "*[t]he content of a document must not be considered to be a reservoir from which features pertaining to separate embodiments could be combined in order to artificially*

create a particular embodiment. When assessing whether a feature has been disclosed in a document, the relevant question is whether a skilled person would seriously contemplate combining the different features cited in that document" and in T 0667/08 (point 4.1.4 of the reasons) that "[i]t is an undisputed principle in the jurisprudence of the Boards of Appeal of the EPO that an amendment is allowable under Article 123(2) EPC if the subject-matter resulting from the amendment is directly and unambiguously derivable from the original application documents i.e. the description, the claims and the drawings, using common general knowledge. Thereby it is not necessary that the subject-matter resulting from the amendment was explicitly disclosed in the original application.

It is therefore essential, when deciding on issues of added subject-matter, to identify the actual teaching conveyed by the original disclosure, i.e. the technical information that the skilled person reading the original disclosure would have derived from its content (description, claims, drawings) considered in its entirety.

This approach might lead to the identification of subject-matter which has not been explicitly revealed as such in the application as filed, but nevertheless derives directly and unambiguously from its content."

- 2.2 The amended claim 1 according to the main request concerns an automatic dishwashing (ADW) detergent composition, reportedly in "unit close form", containing specific polyvalent compounds and specific nonionic surfactants (see point IX above). It is undisputed in this respect that the wording "unit close form" is intended to read actually "unit dose form",

i.e. an individual form containing the dose amount of composition for the destined use in an ADW machine. Claim 1 also requires that the composition in unit dose form is in "*solids, granules or powder form*".

2.3 It is undisputed that claim 1 at issue differs from claim 1 of the application as originally filed (reference being made hereinafter to the published international application WO 2006/041686 A1) insofar as

- the ADW detergent composition is in unit dose form;
- the polyvalent compound is comprised in an amount of from 0.01% to 60% by weight;
- the polyvalent metal compound comprises a metal selected from the group consisting of Al, Mg, Co, Ti, Zr, V, Nb, Mn, Fe, Co, Ni, Cd, Sn, Sb, Bi, Zn, and mixtures thereof;
- the composition has a pH in the range of from 7 to 12, as measured by a 1% aqueous solution; and
- the composition is in solids, granules or powder form.

2.4 The only claim of the application as originally filed relating to an ADW detergent composition in unit dose form is claim 17, which refers back to claim 1 and reads: "*The composition according to Claim 1 wherein said composition is provided in the form of a unit dose selected from the group consisting of: capsules, tablets, multi-phase tablets, coated tablets, single-compartment water-soluble pouches, and combinations thereof.*"

Therefore, this claim does not contain any support for an ADW detergent composition in a unit dose form selected from granules, powders or solids in general as requested in claim 1 at issue.

- 2.4.1 The only passage of the description relating explicitly to an ADW composition in unit dose form is that contained on page 18, lines 17 to 18, reading: "*In one non-limiting embodiment, an ADW detergent composition may be provided as a unit dose (e.g. capsules, tablets, and/or pouches) [...]*".

Therefore, even though capsules, tablets and pouches are indicated in this passage only as examples of a unit dose and other forms of unit dose are not excluded, this passage does not contain any reference to granules, powders or solids in general as possible unit dose forms.

- 2.4.2 The Respondent cited as support for such embodiments of claim 1 at issue the passage contained on page 18, lines 10 to 12, reading: "*Suitable product forms include, but are not limited to: solids, granules, powders, liquids, liquigels, gels, pastes, creams, and combinations thereof.*"

However, this passage concerns only the possible forms for the generic ADW dishwashing detergent composition of the invention, represented by the composition of claim 1 as originally filed, which is not necessarily in a unit dose form.

Suitable forms for the ADW detergent compositions in unit dose form are only disclosed in the following passage on page 18, lines 17 to 18, already discussed

above. In this respect, the skilled person would derive as technical information from the text of this passage reading "*In one non-limiting embodiment, an ADW detergent composition may be provided as a unit dose (e.g. capsules, tablets, and/or pouches) to provide the consumer one or more of the following benefits [...]*" that this disclosure represents a separate embodiment of the invention which is not necessarily applicable to all forms of the composition mentioned above, such as powders and granules, in the absence of the features explicitly disclosed as "unit dose forms", i.e. capsules, tablets or pouches.

- 2.4.3 Also the examples on pages 23 and 24 of the description do not concern a composition in unit dose form and the rest of the description does not contain any suggestion that, for example, powders or granules could be used *per se* as unit dose forms according to the invention.

Therefore, an ADW detergent composition in a unit dose form selected from granules, powders or generic solids is not directly and unambiguously derivable from the application as originally filed.

- 2.4.4 Therefore, in the Board's view, already on these grounds the subject-matter of claim 1 according to the main request does not comply with the requirements of Article 123(2) EPC.

- 2.5 As regards the support for the other amended features of claim 1 at issue, concerning specific polyvalent metal compounds, their amounts and the pH of the claimed composition, it is agreed that these features are indeed disclosed, respectively, in dependent claims 3, 2 and 14 of the original application, which claims refer back to claim 1 only.

The Respondent argued in this respect that the skilled person would have understood that the dependent claims of the original application were actually interdependent and that all features of the dependent claims could be read together as possible combinations for the ADW detergent composition of claim 1.

- 2.5.1 The Board remarks that the set of claims of the original application actually already indicates some claims as being interdependent, for example, claims 3 to 5, claims 6 and 7 and claims 15 and 16. Therefore, the Board cannot agree with the Respondent that the skilled person would have understood all dependent claims to be interdependent. To the contrary, since only some of the dependent claims are explicitly drafted as being interdependent, it would have been directly apparent to the skilled person that these claims have been purposely drafted in a way to indicate which features have to be read in combination and which relate to embodiments, which instead are to be read separately as relating to individual particular aspects of the invention.
- 2.5.2 Therefore, dependent claims 2, 3 and 14 identify separate individual embodiments of the ADW detergent composition of claim 1 and are not a support for an ADW composition containing all the features of these dependent claims in combination as required in claim 1 at issue.
- 2.5.3 Therefore, the combination of features of claim 1 at issue cannot be derived directly and unambiguously from the claims of the original application.

2.5.4 As regards the support in the description for the features mentioned above, the Board remarks that the disclosure of a pH in the range of from 7 to 12, as measured by a 1% aqueous solution, is contained on page 9 of the description.

However, the relevant passage of the description (page 9, lines 4 to 11) reads as follows: "*The ADW detergent composition herein may have any suitable pH. A suitable pH for at least some non-limiting embodiments may fall anywhere within the range of from about 7 to about 12, from about 8 to about 12, from about 9 to about 11.5, and alternatively from about 9 to about 11 as measured by a 1% aqueous solution. For example, certain embodiments of the ADW detergent composition have a pH greater than or equal to about 7, greater than or equal to about 8... as measured by a 1% aqueous solution.*"

Therefore, in the Board's view, the skilled person would have derived as technical information from the text of this passage that, according to the most general teaching of the invention, any pH may be used and that the various ranges of pH disclosed represent separate embodiments of the invention which are not necessarily applicable to all forms of the ADW detergent composition encompassed by the original disclosure. Moreover, he would not have derived from this passage any information as to whether a specific range of pH would be suitable or not for the specific embodiment of claim 1 at issue, i.e. an ADW detergent composition in a unit dose form selected from granules, powders and solids in general.

2.5.5 The Board remarks also that the original description does not suggest, in a similar way, that an amount of 0.01 to 60% by weight of the specific polyvalent metal

compounds according to claim 1 a issue would be applicable to all possible embodiments theoretically encompassed by the original disclosure. In fact, the relevant passage of the description (page 5, last line but one to page 6, line 3) reads: "*In certain non-limiting embodiments, the amount of polyvalent metal compound may be provided in a range of from about 0.01% to about 60%, from about 0.02% to about 50%, from about 0.05% to about 40%, from about 0.05% to about 30%, from about 0.05% to about 20%, from about 0.05% to about 10%, and alternatively, from about 0.1% to about 5%, by weight, of the composition.*"

Also in this case the skilled person would have derived as technical information from the text of this passage that the various amounts of polyvalent compounds disclosed represent separate embodiments of the invention which are not necessarily applicable to all possible forms of ADW detergent compositions.

2.6 Therefore, the Board concludes that an ADW detergent composition having all the features of claim 1 at issue in combination is not directly and unambiguously derivable from the original application documents.

2.7 Claim 1 according to the main request thus does not comply with the requirements of Article 123(2) EPC.

Respondent's 1st to 4th auxiliary requests

3. Claim 1 - Compliance with the requirements of Article 123(2) EPC

3.1 Since claim 1 according to the 1st auxiliary request is identical to claim 1 according to the main request and each claim 1 according to the 2nd to 4th auxiliary

request contains the same combination of features as claim 1 according to the main request (see also point IX above), the same arguments exposed in points 2.2 to 2.5 apply to these claims.

Therefore, for the same reasons as mentioned above, each claim 1 according to the 1st to 4th auxiliary request does not comply with the requirements of Article 123(2) EPC.

Respondent's 5th auxiliary request

4. Claim 1 - Compliance with the requirements of Article 123(2) EPC

4.1 Claim 1 according to the 5th auxiliary request differs from claim 1 according to the main request, insofar as the wording "*and wherein the composition is in solids, granules or powder form*" is replaced by the wording "*and wherein the unit dose form is selected from tablets, multi-phase tablets, coated tablets, and combinations thereof*" (see point IX above).

4.2 The Board remarks that "*tablets, multi-phase tablets and coated tablets...and combinations thereof*" are part of the group of unit dose forms disclosed in claim 17 of the original application (see point 2.4 above). Moreover, the passage of the description relating explicitly to a composition in unit dose form (page 18, lines 17 to 18) exemplifies tablets as possible unit dose form (see point 2.4.1 above).

Therefore, in the Board's view, the skilled person would have derived directly and unambiguously from the whole content of the original application that the ADW detergent composition may be in a unit dose form

selected from tablets, multi-phase tablets, coated tablets, and combinations thereof.

- 4.3 However, the original application does not contain any explicit disclosure of an ADW detergent composition in tablet unit dose form possessing all the features of claim 1 at issue in combination.

As regards the other features contained in claim 1 at issue such as, for example, "a pH in the range of from 7 to 12, as measured by a 1% aqueous solution" or "an amount of 0.01 to 60% by weight" of the specific polyvalent metal compounds, the same arguments as exposed in points 2.5 to 2.5.5 above thus apply to this claim.

- 4.4 Therefore, for the same reasons mentioned under points 2.5 to 2.6 above, an ADW detergent composition having all the features of claim 1 at issue in combination is not directly and unambiguously derivable from the original application documents.

- 4.5 Claim 1 according to the 5th auxiliary request thus contravenes the requirements of Article 123(2) EPC.

Respondent's 6th to 8th auxiliary requests

5. Claim 1 - Compliance with the requirements of Article 123(2) EPC

- 5.1 Since each claim 1 according to the 6nd to 8th auxiliary request contains the same combination of features as claim 1 according to the 5th auxiliary request (see also point IX above), the same arguments as exposed in points 4.2 to 4.4 above apply to these claims.

5.2 Therefore, for the same reasons as mentioned above, an ADW detergent composition having all the features of each claim 1 at issue in combination is not directly and unambiguously derivable from the original application documents.

5.3 Each claim 1 according to the 6th to 8th auxiliary requests thus contravenes the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

- The decision under appeal is set aside.
- The patent is revoked.

The Registrar:

The Chairman:



D. Magliano

E. Bendl

Decision electronically authenticated