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**Datasheet for the decision  
of 24 June 2015**

**Case Number:** T 0562/13 - 3.3.06  
**Application Number:** 05786488.6  
**Publication Number:** 1776442  
**IPC:** C11D1/37, C11D1/65, C11D1/86,  
C11D17/06  
**Language of the proceedings:** EN

**Title of invention:**

A HIGHLY WATER-SOLUBLE SOLID LAUNDRY DETERGENT COMPOSITION  
THAT FORMS A CLEAR WASH LIQUOR UPON DISSOLUTION IN WATER

**Patent Proprietor:**

The Procter & Gamble Company

**Opponents:**

UNILEVER N.V./UNILEVER PLC

**Headword:**

Solid laundry detergent with separate particulate surfactants/  
P&G

**Relevant legal provisions:**

EPC R. 99(1)(a), 101(2)  
EPC Art. 56

**Keyword:**

Admissibility of appeal - (yes) -  
although the notice of appeal mentioned only one of the joint  
opponents/appellants  
Inventive step - (yes)  
Inventive step - non-obvious solution

**Decisions cited:**

G 0003/99, G 0001/12, R 0018/09

**Catchword:**



**Beschwerdekammern  
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Chambres de recours**

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Case Number: T 0562/13 - 3.3.06

**D E C I S I O N  
of Technical Board of Appeal 3.3.06  
of 24 June 2015**

**Appellants:** UNILEVER N.V.  
(Opponents) Weena 455  
3013 AL Rotterdam (NL)

UNILEVER PLC  
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London EC4Y ODY (UK)

**Representative:** Kan, Jacob Hendrik  
Unilever Patent Group  
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**Respondent:** The Procter & Gamble Company  
(Patent Proprietor) One Procter & Gamble Plaza  
Cincinnati, OH 45202 (US)

**Representative:** Samuels, Lucy Alice  
Gill Jennings & Every LLP  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 11 January 2013  
rejecting the opposition filed against European  
patent No. 1776442 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** G. Santavicca  
**Members:** E. Bendl  
C. Heath

## Summary of Facts and Submissions

I. The appeal lies from the decision of the Opposition Division rejecting the opposition against the European patent No. 1 776 442.

II. In the decision under appeal the Opposition Division found that the claimed subject-matter of the patent in suit as granted involved an inventive step, thus that the ground of opposition thereof did not prejudice maintenance of the patent as granted.

III. Claim 1 of the patent in suit as granted reads as follows:

*"1. A solid laundry detergent composition comprising:*

- (a) from 0.1 wt% to 10 wt% of an alkoxyated anionic deterative surfactant;*
- (b) from 1 wt% to 25 wt% of an non-alkoxyated anionic deterative surfactant;*
- (c) from 0 wt% to 4 wt% zeolite builder;*
- (d) from 0 wt% to 4 wt% phosphate builder; and*
- (e) from 0 wt% to 10 wt% silicate salt. [sic]*

*and wherein the composition comprises at least two separate surfactant components, each in particulate form:*

- (a) a first surfactant component predominantly comprising an alkoxyated anionic deterative surfactant; and*
- (b) a second surfactant component comprising greater than 50%, by weight of the second surfactant component, of a non-alkoxyated anionic deterative surfactant."*

Claim 39 reads as follows:

"39. A detergent product comprising a combination of a composition according to any preceding Claim and a packaging system, wherein the packaging system has a moisture vapour transfer rate of from  $0 \text{ gm}^{-2}\text{day}^{-1}$  to less than  $20 \text{ gm}^{-2}\text{day}^{-1}$ ."

Claims 2 to 38 and 40 to 42 are dependent on Claims 1 and 39, respectively, and represent preferred embodiments thereof.

- IV. The Representative of the Opponents lodged an appeal against the decision "*on behalf of the opponent Unilever N.V.*" (notice of appeal dated 19 February 2013 in the Dutch language and translation thereof into English submitted on the same day).
- V. With the statement setting out the grounds of appeal, the Appellant(s) filed comparative experimental data, and document WO 98/50520 A1 (D7) as evidence of an allegedly known "salting out" effect.
- VI. With its letter dated 23 September 2013, the Respondent *inter alia* requested not to admit the new experimental data and D7, due to late submission and lack of relevance, and filed an auxiliary claim request.
- VII. The Board issued a communication in preparation of the oral proceedings and gave its preliminary view on the issues likely to be discussed during the oral proceedings. *Inter alia* the Board mentioned the question of the admissibility of the appeal due to the unclear party status of the Opponent Unilever PLC.

- VIII. The Representative of the Appellant(s) replied to the Board's communication with his letter of 27 May 2015.
- IX. Oral proceedings took place on 24 June 2015. The debate focused on the admissibility of the appeal and the issue of inventive step of the claimed subject-matter of the Main Request.
- X. The Appellant(s) requested that the decision under appeal be set aside and that the patent be revoked.

The Respondent requested that the appeal be dismissed or, alternatively, that the patent be maintained on the basis of the auxiliary request submitted with the reply to the grounds for appeal dated 23 September 2013.

- XI. The arguments of the Appellant(s) of relevance for the present decision can be summarised as follows:

*Admissibility of the appeal*

The appeal was filed jointly by Unilever N.V. and Unilever PLC, by the joint Representative, Mr Kan, who, in this respect, *inter alia* made the following statement (see page 2, first three paragraphs, of the letter dated 27 May 2015):

*"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 February 2013 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 the 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 G 1/12 of the name and address of the joint appellants on the notice of appeal of 19 February 2013 submitted in the above mention[ed] case."*

*Inventive step*

- D1 (US 5 756 444 A) disclosed the closest prior art.
- The only difference between the claimed subject-matter and D1 was the separation of the two surfactants present in the solid laundry detergent composition into distinct particles.
- The wording of Claim 1 could be interpreted in different ways, so that, according to the Appellant(s)' interpretation, the examples and experimental data submitted by the Respondent on 6 February 2009 and on 16 November 2012 were not in line with the claims. Thus, the experimental data were not suitable to demonstrate any improved solubility effect due to the separation of the two surfactants.
- The claimed separation was anyhow obvious to the skilled person, as it allowed to formulate compositions in a more flexible way, so as to be

in a position to react to commercial, legal or environmental constraints quickly.

- The separation of individual ingredients contained in a detergent mixture was also known from D4 (WO 00/39274 A1) and from D5 (WO 00/18856 A1), so that the combination of D1 with either of these documents would render obvious the claimed subject-matter.
- It was conceded by the Appellant(s) that none of the cited documents mentioned the separation of the alkoxyated anionic deterative surfactants from the non-alkoxyated anionic deterative surfactants. Nevertheless, such a separation too was considered to be obvious for a skilled person.
- Thus, the claimed subject-matter was obvious.

XII. The counter-arguments of the Respondent of relevance for the present decision can be summarised as follows:

*Admissibility of the appeal*

No comments were submitted on this issue.

*Inventive step*

- D1 might be taken as the closest prior art.
- Since the Proprietor's interpretation of Claim 1 was in line with the patent in suit, and had been adopted by the Opposition Division, there was no reason for the Board to adopt the Appellants' interpretation. Moreover, the Appellants' experimental data were not relevant, not only because they concerned compositions which were not functional (due to the high proportion of calcium carbonate), but also because the amounts of



surfactants were outside the Appellants' interpretation of Claim 1.

- In any case, no separation of the anionic surfactants could be derived from D1.
- Starting from D1, the skilled person would have no reason to further modify a composition with advantageous properties in order to introduce more "flexibility" in the formulation of detergent compositions.
- D4 or D5 addressed quite different problems from the ones described in D1. In particular, they did not mention the said separation of alkoxyated and non-alkoxyated anionic surfactants.
- Therefore, the claimed subject-matter was not derivable in an obvious way from the invoked prior art, and involved an inventive step.

## **Reasons for the Decision**

### 1. Admissibility of the appeal

- #### 1.1
- The notice of appeal against the decision of the Opposition Division, filed with letter of 19 February 2013 in Dutch (together with an English translation), was expressly "*on behalf of the opponent, Unilever N.V.*".

According to the Representative's statement in its letter dated 27 May 2015 (*supra*), this notice of appeal was however to be meant to have been filed on behalf of both opponents.

- #### 1.2
- The Respondent did not comment on this issue.

- 1.3 It is undisputed that in opposition proceedings Unilever N.V. and Unilever PLC acted as joint opponents and were jointly represented by Mr Kan.
- 1.4 According to the reasoning given in decisions G 3/99 (OJ EPO 2002, 347) and R 18/09 of 27 September 2010, 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 (G 3/99, Reasons, 14 and 15). Should such a group of common opponents intend to file an appeal, they can only do so jointly as a single party acting through their common representative (G 3/99, Reasons, 17; R 18/09, Reasons, 5).
- 1.5 G 3/99 furthermore states (Order, 3) that "*[i]n order to safeguard the rights of the patent proprietor and in the interest 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**" (emphasis added).*
- 1.6 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.
- 1.7 No arguments or any proof pointing to the contrary have been submitted by the Respondent either.

1.8 The facts and evidence at hand, including the statement by the joint Representative, convincingly lead the Board to the conclusion that it was the Appellants' true intention to file the appeal jointly by both Opponents, i.e. Unilever N.V. and Unilever PLC, thus as joint Appellants.

1.9 However, the notice of appeal does not reflect or express this true intention of the parties on whose behalf it was intended to be filed. In other words, the notice of appeal omits the designation of Unilever PLC. In this respect, a correction under Rule 101(2) EPC as referred to in G 1/12 (OJ EPO 2014, A114) has been requested by the Representative of the joint Opponents.

1.10 Hence, the Board considers it necessary, for both Opponents, Unilever N.V and Unilever PLC, to continue acting through the common Representative before the EPO as joint Appellants, that the file be corrected, in line with G 1/12, so as to mention both Opponents as joint Appellants, i.e. to clarify or introduce what was originally intended in the notice of appeal.

1.11 The appeal is consequently admissible.

#### Main Request

2. Inventive step

2.1 The invention

2.1.1 The patent in suit relates to highly water-soluble solid laundry detergent compositions comprising an anionic deterative surfactant system and low or no

levels of zeolite builder, phosphate builder and silicate salt (paragraph [0001]).

The aim of these compositions is *inter alia* that, in addition to a good fabric-cleaning performance (paragraph [0002]), a clear wash liquor is formed upon dissolution in water (paragraph [0001]).

## 2.2 The closest prior art

2.2.1 At the oral proceedings before the Board it was common ground between the parties, acknowledged by the Board as well, that D1 is a suitable starting point for assessing inventive step according to the problem-solution approach.

2.2.2 D1 refers to granular laundry detergent compositions which are substantially free of aluminosilicate and phosphate builders (Claim 1; column 1, lines 8 to 10). Examples I to III of D1 disclose zeolite-free detergent compositions comprising at least an alkoxyated anionic deterative surfactant and a non-alkoxyated anionic deterative surfactant as claimed in the patent-in-suit. However, these examples do not show the separation of the two anionic surfactants into separate particles.

2.2.3 The aim of D1 is the achievement of improved cleaning performance and improved physical properties (both: column 2, line 37), the latter property including solubility in wash water (column 1, lines 63 to 65).

## 2.3 The technical problem

2.3.1 During the examination and opposition proceedings, the Respondent provided tests allegedly showing improved solubility of the preparations according to the

invention, i.e. containing an alkoxyated anionic deterative surfactant and a non-alkoxyated anionic deterative surfactant, each in separate particulate form, compared to a composition in which these ingredients are admixed together.

2.3.2 The Appellants, holding that these tests were not meaningful and did not fall within the wording of the claims of the Main Request, which should be interpreted broadly, filed further tests allegedly showing that the improved solubility could not be achieved for all of the compositions as claimed. They thus concluded that no effect had been convincingly demonstrated, and, therefore, that the problem solved was to be seen in the providing of a composition being **alternative** to that disclosed in D1.

2.3.3 For the sake of argument, and for the benefit of the Appellants, the Board decided to follow (in a first approach) the Appellants' line of argumentation that the problem was to be seen in the providing of compositions being alternative to those disclosed in D1.

After all, should the claimed invention already be non-obvious when seeking compositions being alternative to those of the closest prior art D1, the question whether or not any effect had convincingly been demonstrated would not be relevant any more.

2.4 The solution

As the solution to the above problem, the compositions according to Claim 1 and the detergent products according to Claim 39, comprising the compositions according to Claim 1, were proposed. These compositions

comprise, in particular, an alkoxyated anionic  
deterasive surfactant and a non-alkoxyated anionic  
deterasive surfactant, each in separated, particulate  
form, and contain, if at all, at most limited amounts  
of zeolite builder, phosphate builder and/or silicate  
salt as defined.

2.5 The success of the solution

The Board has no reason to doubt that the problem of  
providing solid laundry detergent compositions being  
alternative to those of D1 has been successfully  
solved. This was not in dispute.

2.6 Obviousness of the solution

2.6.1 It remains to be decided whether the claimed subject-  
matter was obvious for the skilled person starting from  
the closest prior art D1 with the aim to provide  
alternative compositions to those of D1.

2.6.2 Although D1 discloses granular laundry compositions, it  
does not suggest the separating of the alkoxyated  
anionic deterasive surfactants from the non-alkoxyated  
anionic deterasive surfactants into different particles.  
This has also been conceded by the Appellants.

2.6.3 It was however argued by the Appellants at the oral  
proceedings before the Board that the claimed  
separation was obvious to the skilled person, as it  
permits changes in the formulation of the products for  
marketing reasons, or for overcoming environmental  
concerns, or for more quickly and easily adapting to  
different national regulations or legal requirements.

- 2.6.4 However, no proof or evidence in this respect has been provided by the Appellants, and it appears that these arguments were presented for the first time during the oral proceedings.
- 2.6.5 It is also not immediately apparent to the Board why the skilled person would modify the preparations according to D1, which reportedly possesses "*both improved physical properties and cleaning performance without using aluminosilicates or phosphates*" (D1, column 2, lines 36 to 38), in order to be prepared for a (not further defined) potential marketing advantage or for adapting to potential (future) legal or environmental constraints in one of the countries of potential marketing.
- 2.6.6 Quite on the contrary, D1 teaches, as highlighted by the Respondent at the oral proceedings, that a **mixture** of linear alkyl benzene sulfonate, alkyl sulfate and alkyl ethoxy sulfate surfactants should be prepared (column 2, lines 56 to 58). In particular, the passage in column 16, lines 1 to 6, discloses that a slurry comprising the surfactants (plural), carbonate and sulfate is formed and subjected to "*a standard spray drying process*" in order to produce the compositions of D1.
- 2.6.7 Thus, the Board cannot see any hint in the disclosure of D1, taken alone or in combination with the common general knowledge of a skilled person, to separate the two specific anionic surfactant components into distinct particles, as defined in Claim 1 as granted.
- 2.6.8 Therefore, the Board considers that the claimed subject-matter cannot to be derivable from D1.

2.6.9 In a further approach the Appellants combined the teaching of D1 with that of either D4 or D5.

The Board has serious doubts whether the skilled person would have any motivation or find any incentive to combine the teaching of D1 with the disclosure of either of these documents. On the one hand, improved properties of the products according to D1 have been reported (see point 2.6.5 *supra*), which do not appear to render these products a suitable candidate for further modification. On the other hand, the solutions proposed in D4 and D5 are entirely different from the ones disclosed by D1, as will be explained *infra*.

2.6.10 D4 relates to the avoidance of gelling of anionic surfactants and **nonionic** ethoxylated alcohol surfactants by adding specific **nonionic** polyalkoxylated fatty acid amide surfactants in solid particle form (page 2, first and second full paragraph).

Thus, D4 does not propose the separation of two **anionic** surfactants in distinct particles, as claimed in the patent in suit.

2.6.11 D5 relates to detergent granules or tablets and teaches that gelling may occur when an anionic **sulphate** surfactant and an anionic **sulphonate** surfactant are formulated together. By reducing the contact of both compounds or even by separating them as much as possible this problem may be avoided (page 2, first and second paragraph).

Even though some of the surfactants may be alkoxyated, D5 does not relate to the separation of the alkoxyated anionic deterative surfactants from the non-alkoxyated anionic deterative surfactants. On the contrary, on page



16, lines 19 and 20, a **mixture** of an alkyl sulphate with an alkyl ethoxy sulphate is referred to as a preferred embodiment.

2.6.12 Thus, even if the skilled person combined the teachings of D1 and D4 or D5, he would not obviously arrive at the claimed subject-matter.

2.6.13 Therefore, the subject-matter of Claim 1 is neither obviously derivable from D1, taken alone or in combination with the common knowledge of a skilled person, nor from D1 in combination with either of D4 or D5.

2.6.14 Thus, already when starting from the problem of providing a solid laundry detergent composition being alternative to that of D1, the subject-matter of Claim 1 as granted involves an inventive step.

2.6.15 These considerations apply *mutatis mutandis* also to the detergent product according to Claim 39, comprising the composition according to Claim 1, and to the subject-matters of the dependent claims.

2.7 It follows from the foregoing that the question whether an unexpected or surprising effect justifying an improvement over D1 has been convincingly demonstrated is of no relevance, i.e. does not need to be dealt with in the decision. The Board need not decide either whether the experimental data submitted by the Appellants are admissible into the proceedings, nor how the claims should be interpreted in respect of the examples submitted by the Respondent. The same applies to the admissibility of late filed document D7, which was no longer invoked during the oral proceedings.

2.8 Since the requirements of Article 56 EPC are considered to be met by the claimed subject-matter of the patent in suit as granted, the Board has no reason to deviate from the decision under appeal.

2.9 Consequently, the ground of opposition under Article 100(a) EPC (lack of an inventive step) does not prejudice the maintenance of the patent as granted.

### **Order**

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

1. The appeal is dismissed.
2. The file is corrected in that both Opponents, Unilever N.V. and Unilever PLC are listed as joint Appellants.

The Registrar:

The Chairman:



D. Magliano

G. Santavicca

Decision electronically authenticated