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**Datasheet for the decision
of 10 June 2015**

Case Number: T 2359/13 - 3.3.06

Application Number: 07762419.5

Publication Number: 1979456

IPC: C11D3/386, C11D3/39

Language of the proceedings: EN

Title of invention:

A COMPOSITION COMPRISING A LIPASE AND A BLEACH CATALYST

Applicant:

THE PROCTER & GAMBLE COMPANY

Headword:

Variant lipase/bleach catalyst composition/P&G

Relevant legal provisions:

EPC Art. 84
EPC R. 115(2)

Keyword:

Clarity - no

Decisions cited:

T 2006/09

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 2359/13 - 3.3.06

**D E C I S I O N
of Technical Board of Appeal 3.3.06
of 10 June 2015**

Appellant:
(Applicant)

THE PROCTER & GAMBLE COMPANY
One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative:

Peet, Jillian Wendy
Procter & Gamble Technical Centres Limited
Whitley Road
Longbenton
Newcastle upon Tyne
NE12 9TS (GB)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 1 July 2013
refusing European patent application No.
07762419.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman B. Czech
Members: E. Bendl
 C. Heath

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse the European patent application No. 07 762 419.5.
- II. In the appealed decision the examining division concluded that the subject-matter of the claims according to the (sole) then pending claims request did not involve an inventive step. This set of claims consists of claims 7 to 10 submitted on 15 February 2011 and claims 1 to 6 and 11 to 16 submitted on 28 January 2013 (a clean typed copy of claims 1 to 16 was submitted on 10 May 2013).
- III. Claim 1 of said request reads as follows:
- "1. A composition comprising:*
- a) a variant of a parent lipase, the parent lipase being the lipase of SEQ ID no: 2, as defined in the specification, said variant, when compared to said parent, comprising a total of at least three substitutions, said substitutions being selected from one or more of the following groups of substitutions:*
- (i) at least two substitutions in Region I,*
(ii) at least one substitution in Region II,
(iii) at least one substitution in Region III,
and/or
(iv) at least one substitution in Region IV; and
- b) a bleach catalyst that is capable of accepting an oxygen atom from a peroxyacid and transferring the oxygen atom to an oxidizable substrate, comprising an iminium functional group and is*

capable of forming an oxaziridinium functional group upon acceptance of an oxygen atom."

Dependent claim 2 reads as follows:

"2. A detergent composition according to Claim 1 wherein said substitutions in region I comprise substitutions in the positions corresponding to the positions 231 and 233 and wherein said substitutions at positions 231 and 233 are substituted with an R."

- IV. In its statement setting out the grounds of appeal, the appellant (applicant) held that the examining division erred in concluding that the subject-matter of the claims did not involve an inventive step. It requested that the decision under appeal be set aside and that "the patent proceed to grant on the basis of the Main Request with Claim 1 as submitted on 28 January 2013".
- V. The board summoned the appellant to oral proceedings. In the communication issued in preparation for the oral proceedings the Board questioned *inter alia* whether pending claims 1 and 2 met the requirements of Article 84 EPC. More particularly, the board indicated the following (point 4.2 of the communication):

"4.2 Clarity/Support by the description

Article 84 EPC requires that the claims shall be clear. This implies that their wording must be understandable, without the need to consult the description.

4.2.1 Claim 1 refers to "region I" to "region IV" of a "variant of a parent lipase", without giving details where these regions are located on the

lipase. Since the positions of the amino acid residues defining these regions are not specified in independent claim 1, the latter lacks clarity and/or support by the description as regards the lipases supposed to be covered by this wording.

4.2.2 Claims 2 to 6 are directed to a "detergent composition according to claim 1". Claim 1 is, however, not directed to a detergent composition. A lack of clarity arises.

4.2.3 Thus, the requirements of Article 84 EPC do not appear to be met."

- VI. The appellant neither commented on the objections raised in the communication nor filed any amendments. Instead, it merely announced with letter of 2 June 2015 that it would not be represented at the oral proceedings and withdrew its request for oral proceedings.
- VII. The oral proceedings took place on 10 June 2015 as scheduled. In accordance with Rule 115(2) EPC and Article 15(3) RPBA, the Board handed down its decision despite the absence of the party.
- VIII. As indicated by the Board in its communication, it is understood from the the statement of grounds that the appellant requests that the decision under appeal be set aside and the patent be granted on the basis of the set of claims as submitted on 15 February 2011 and 28 January 2013 (see point II *supra*).

Reasons for the Decision

Clarity of the claims (Article 84 EPC)

1. According to established jurisprudence of the boards of appeal the wording of a claim has to be clear in itself when read by a person skilled in the art, without any reference to the content of the description (see e.g. T 2006/09 of 9 July 2011, point 4 of the reasons). In the present case this requirement is not met.
2. A first clarity objection was raised under point 4.2.1 of the board's communication (see V *supra*).

Indeed, since claim 1 neither defines the respective lengths of the regions I to IV nor their exact position on the lipase, the skilled person is not in a position to unambiguously conclude whether or not a given lipase of the claimed type having at least three substitutions falls within the ambit of claim 1.

3. A second clarity objection was raised under point 4.2.2 of the board's communication (see V *supra*).

Indeed, the composition according to claim 1 may comprise only a lipase and a bleach catalyst, and does not necessarily comprise a surfactant component. Hence, it does not necessarily qualify as a "*detergent composition*". Therefore, in view of the back-reference in (for instance) claim 2 to a "*detergent composition according to claim 1*" there is an ambiguity as to whether or not the composition according claim 1 needs to fulfill further requirements, for instance whether it requires the presence of an additional surfactant

- component, in order to qualify, necessarily, as a "*detergent composition*".
4. The appellant did not reply in substance to the board's communication and did not attend the oral proceedings.
 5. Hence, the Board, after having re-considered all relevant aspects of the case, has no reason to deviate from its preliminary opinion expressed in the communication issued in preparation for the oral proceedings.
 6. In the board's judgement, claim 1 at issue lacks clarity (Article 84 EPC).
 7. The appellant's request is thus not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Magliano

B. Czech

Decision electronically authenticated