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**Datasheet for the decision
of 10 October 2018**

Case Number: T 0664/14 - 3.2.07

Application Number: 08701831.3

Publication Number: 2117954

IPC: B65D65/46, B65D81/32

Language of the proceedings: EN

Title of invention:

DOSAGE ELEMENT AND A METHOD OF MANUFACTURING A DOSAGE ELEMENT

Patent Proprietor:

Reckitt Benckiser Finish B.V.

Opponents:

The Procter & Gamble Company
Henkel AG & Co. KGaA

Headword:

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 0664/14 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 10 October 2018

Appellant: The Procter & Gamble Company
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 13 February
2014 rejecting the opposition filed against
European patent No. 2117954 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: K. Poalas
 V. Bevilacqua

Summary of Facts and Submissions

I. Opponents 1 and 2 lodged each an appeal in the prescribed form and within the prescribed time limit against the decision of the opposition division rejecting their oppositions against the European patent No. 2 117 954.

II. Two oppositions had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step).

The opposition division found that the ground for opposition under Article 100 (a) EPC does not prejudice the maintenance of the patent as granted.

III. The following documents are known from the opposition proceedings:

D1: GB 2 374 581 A

D8: WO 2004/014753 A1

D10: Registered Community Designs No 000019070-0001 to 000019070-0008.

IV. Oral proceeding before the Board took place on 10 October 2018. For the course of the oral proceedings, in particular concerning the parties' requests, the restriction of the opponents' objections to novelty and inventive step of claim 1 of the patent as granted, and the order of the decision announced at the end of the oral proceedings, reference is made to the minutes.

The appellant-opponents requested that the decision under appeal be set aside and that the European patent No. 2 117 954 be revoked.

The respondent-patent proprietor requested that the appeals be dismissed (i.e. that the patent be maintained as granted - main request), or, in the alternative, that, when setting aside the decision under appeal, the patent be maintained in amended form on the basis of one of the sets of claims filed as auxiliary requests 1 to 3 with letter dated 7 November 2014.

V. The independent claim 1 of the **main request** reads as follows:

"A method of manufacturing a dosage element to be consumed in use in a ware washing machine, the method comprising:

- (a) forming a first part into an open receptacle;
 - (b) forming a second part into a substrate carrying a plurality of substances arranged in side by side relation; and
 - (c) closing said open receptacle of said first part by joining the first and second parts to one another so as to enclose said substances within said first and second parts,
- characterised in that the mould geometry for forming said first part is designed such that the first part forms a chamber able to embrace tightly said substances of the second part".

VI. Opponent 1 argued essentially that the subject-matter of claim 1 of the main request is not novel over the disclosure of D1 and that the subject-matter of claim 1 of the main request does not involve an inventive step over the teaching of D1 in combination with the general technical knowledge of the skilled person and also over

the teaching of D8 in combination with the general technical knowledge of the skilled person.

- VII. Opponent 2 argued essentially that the subject-matter of claim 1 of the main request does not involve an inventive step over the teaching of D1 in combination with the general technical knowledge of the skilled person, over the teaching of D1 in combination with the teaching of D10, and also over the teaching of D10 in combination with the teaching of D1.
- VIII. The patent proprietor argued that the subject-matter of claim 1 of the main request is novel over the disclosure of D1 and that it also involves an inventive step.
- IX. The details of the parties' submission are dealt with in the followings Reasons.

Reasons for the Decision

1. *Claim 1 of the main request - Novelty, Article 54 EPC*
- 1.1 At the oral proceedings before the Board opponent 2 stated that they withdrew the objection to novelty of the subject-matter of claim 1 of the patent as granted, and opponent 1 stated that the novelty attack on the subject-matter of claim 1 of the patent as granted over the disclosure of D1 was maintained but that no oral submissions in addition to the written submissions would be made.
- 1.2 Under point 4.1 of its communication pursuant to Article 15(1) RPBA dated 20 July 2018, the Board

informed the parties that it considers that the feature of claim 1 concerning "a substrate carrying a plurality of substances arranged in side by side relation" is to be interpreted as defining that the substances are connected to each other via the substrate being at the same time **arranged along a row**. They can but they don't have to share a common side, as argued by opponent 2. A single composition comprising a homogeneous mixture of two ingredients cannot be considered as a composition having a plurality of substances arranged in a side by side relation. Also compartments on top of each other cannot be considered as being arranged in side by side relation.

- 1.3 This Board's interpretation of the above-mentioned feature of claim 1 was not contested by the parties.
- 1.4 The passage on page 16, lines 10 – 14, of D1, referred to by the opponents, does not specifically teach that, when two or more compartments are provided in or on the sealing member, they must both be in a side by side arrangement and positioned on the lower side of the sealing member such that they end up inside (i.e. enclosed by) the first compartment.
- 1.5 In view of the above, the method step of claim 1 concerning the forming of a second part into a substrate carrying a plurality of substances arranged in side by side relation, said part being joined to a first part in a manner such that the substances are enclosed within the first and second parts, is **not disclosed in D1**, see also point 5.2.1 of the above-mentioned Board's communication.
- 1.6 Furthermore, under point 4.2 of the afore-mentioned communication, the Board informed the parties that it

considers that the feature of claim 1 concerning the mould geometry for forming the first part being designed such that the first part forms a chamber able to embrace tightly said substances of the second part defines that the substances are embraced by the chamber tightly, *i.e.* so that a relative movement between said substances and the chamber and/or between said substances in relation to each other is prevented. Thereby, this **tight fixing** of the substances occurs via the **geometry of the mould** and thus via the **geometry of the chamber/receptacle**, whereby at least some of the chamber walls or some parts of the chamber's wall have a direct or indirect contact with at least some of said substances.

- 1.7 Also this Board's interpretation of said second above-mentioned feature of claim 1 was not contested by the parties.
- 1.8 Even if accepting that figure 3 of D1 discloses a second part carrying a second substance 2 being tightly embraced by the first part, carrying the first substance 1 therein, there is no information in D1 that this is achieved due to the geometry of the mould for the chamber/receptacle, as claimed in claim 1.
- 1.9 Accordingly, also said second feature concerning the mould geometry is not known from D1, see also point 5.2.1 of the above-mentioned Board's communication.
- 1.10 From the above follows that the claimed subject-matter is novel over the disclosure of D1.

2. *Claim 1 of the main request - Inventive step, Article 56 EPC*
- 2.1 *The teaching of D1 in combination with the general technical knowledge of the skilled person*
- 2.1.1 D1 does not disclose the following method steps of claim 1, see chapter 1 above:
forming a second part into a substrate carrying a **plurality of substances arranged in side by side relation,**
closing said open receptacle of said first part by joining the first and second parts to one another so as to **enclose said substances [arranged in side by side relation] within said first and second parts.**
D1 also fails to disclose that the **mould geometry** for forming said first part is designed such that the first part forms a chamber able to **embrace tightly** said substances of the second part.
- 2.1.2 The technical effect of said differentiating features is that the first and second parts support each other when they come together in the tight-fitting arrangement, to provide a product that is robust and resistant to stress, whereby potential weak spots, i.e. the areas of maximum curvature of the film forming the second part of D1, are protected, as explained in paragraphs [106]-[108] of the patent in suit.
- 2.1.3 The technical problem to be solved is to be seen in providing a manufacturing method for a dosage element to be consumed in use in a ware washing machine exhibiting the above-mentioned technical effects.
- 2.1.4 The opponents did not submit any evidence for their assertion, which was contested by the patent

proprietor, that a skilled person, seeking to solve the above-mentioned problem would find in its general technical knowledge a hint for redesigning the method known from D1 in the form of forming a second part into a substrate carrying a **plurality of substances arranged in side by side relation**, closing the open receptacle of the first part by joining the first and second parts to one another so as to **enclose said substances [arranged in side by side relation] within said first and second parts**, and designing the **mould geometry** for forming said first part such that the first part forms a chamber able to **embrace tightly** said substances of the second part.

- 2.1.5 In the absence of any evidence in this respect, the Board considers the above-mentioned assertion of the opponents as an unsubstantiated allegation. Accordingly, the combination of the teaching of D1 with the general technical knowledge of the skilled person does not render the claimed subject-matter not inventive.

- 2.2 *The teaching of D1 in combination with the teaching of D10*
 - 2.2.1 The statements under points 2.1.1 to 2.1.3 above remain valid.

 - 2.2.2 D10 are registered community designs disclosing images of dosage elements containing multiple side-by-side compartments. There is no technical teaching derivable from D10 concerning the provision of additional moulded coverings (first parts) in the form of an open receptacle in order to be tightly-fitted over the substances of the dosage elements. It is further no teaching to be found in D10 concerning the designing of

the **mould geometry** for forming such an additional covering such that said covering forms a chamber able to **embrace tightly** the substances of the dosage element(s) shown in D10.

2.2.3 Accordingly, the skilled person seeking to solve the above-mentioned problem would find in D10 no hint for re-designing the method known from D1 in the form of forming a second part into a substrate carrying a **plurality of substances arranged in side by side relation**, closing the open receptacle of the first part by joining the first and second parts to one another so as to **enclose said substances [arranged in side by side relation] within said first and second parts**, and designing the **mould geometry** for forming said first part such that the first part forms a chamber able to **embrace tightly** said substances of the second part.

2.2.4 Therefore, the combination of the teaching of D1 with the teaching of D10 does not render the claimed subject-matter not inventive.

2.3 *The teaching of D8 in combination with the general technical knowledge of the skilled person*

2.3.1 D8 discloses a process for producing a container comprising the steps of forming an open container, positioning a spacer in the open container, at least partially filling the container with the first composition and with the second compartment containing the second composition, and sealing the container; or forming an open container, positioning the spacer in the open container, at least partially filling the container with the first composition, and sealing the container with a sealing member comprising the second compartment containing the second composition, see

claim 19.

2.3.2 According to the paragraph bridging pages 10 and 11 of D8 both the first and the second compartments may be divided each into a number of sub-compartments, each of those containing a different composition.

2.3.3 The Board notes that said paragraph does not state that these sub-compartments are positioned side-by-side. Even if the skilled person had thought of arranging said sub-compartments in a side by side relation, the skilled person would not get any hint from its general technical knowledge to design the mould geometry of the first part such that the first part would form a chamber able to embrace tightly the sub-compartments of the second part, see hereto also point 2.1.4 above.

2.3.4 Accordingly, the combination of the teaching of D8 with the general technical knowledge of the skilled person does not render the claimed subject-matter not inventive.

2.4 *The teaching of D10 in combination with the teaching of D1*

2.4.1 As stated under point 2.2.2 above, D10 are registered community designs disclosing images of dosage elements containing multiple side-by-side compartments. There is no technical teaching derivable from D10 concerning the provision of additional moulded coverings (first parts) in the form of an open receptacle in order to be tightly-fitted over the substances of the dosage elements. There is further no teaching to be found in D10 concerning the designing of the **mould geometry** for forming such an additional covering such that said covering forms a chamber able to **embrace tightly** the

substances of the dosage element (second part) shown in D10.

- 2.4.2 This means that at least the feature of claim 1 concerning the designing of the **mould geometry** for forming the first part (being designed such that it forms a chamber able to **embrace tightly** the substances of the second part) is not known from D10.
- 2.4.3 Since said feature is also not known from D1, see chapter 2.1.1 above, this feature would be also missing in a combination of the teachings of D10 and D1.
- 2.4.4 Accordingly, the combination of the teachings of D10 and D1 does not render the claimed subject-matter not inventive.
3. Since none of the opponents' objections to novelty and inventive step of the subject-matter of claim 1 of the patent as granted is convincing, the Board does not find fault with the decision under appeal rejecting the opponents' oppositions.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated