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**Datasheet for the decision  
of 26 July 2018**

**Case Number:** T 0469/15 - 3.3.06

**Application Number:** 08101442.5

**Publication Number:** 2088187

**IPC:** C11D17/04, B65D65/46

**Language of the proceedings:** EN

**Title of invention:**

Process For Making A Water-Soluble Pouch

**Patent Proprietor:**

The Procter & Gamble Company

**Opponent:**

Reckitt Benckiser (Brands) Limited

**Headword:**

Process For Making A Water-Soluble Pouch/Procter & Gamble

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - main request (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0469/15 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 26 July 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 16 December  
2014 revoking European patent No. 2088187  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** P. Ammendola  
J. Hoppe

## Summary of Facts and Submissions

- I. The appeal of the patent proprietor (hereafter the **appellant**) lies from the decision of the opposition division to revoke European patent no. 2 088 187.
- II. The opposition division found that neither the process defined in granted claim 1 nor any of the processes defined in the amended versions of claim 1 according to the then pending auxiliary requests were inventive in view of the prior art disclosed in document
- D1 = EP 1 504 994 B1.
- III. In its response to the grounds of appeal, the opponent (hereafter the **respondent**) reiterated its objection of lack of inventive step over document D1, arguing that the claimed subject-matter was an obvious alternative to this prior art.
- IV. After having received the preliminary opinion of the board, the appellant filed four sets of amended claims with letter of 24 July 2018 as main request (labelled AHMR) and as first to third auxiliary requests (respectively labelled AHAR 1 to AHAR 3).

Claim 1 of the main request reads as follows:

*"1. A process for making a detergent water-soluble pouch having a plurality of compartments wherein the pouch has compartments in a superposed configuration and compartments in a side-by-side configuration the process comprising the steps of:*

*a) making a first web of open or closed pouches in a first pouch making unit having a forming surface wherein the forming surface is a horizontal unit;*

- b) *making a second web of open or closed pouches in a second pouch making unit having a forming surface wherein the forming surface is circular and wherein the second pouch making unit is placed above the first pouch making unit;*
- c) *combining the first and second webs of pouches wherein the forming surfaces bring the web of pouches into contact and exert pressure on them to seal the webs; wherein the combination of two webs of pouches, is done directly from the forming surfaces, to form a web of multi-compartment pouches without requiring the intermediate step of removing one or two of the webs from the corresponding forming surface before combining it with the other web,*
- d) *cutting the resulting web of pouches to produce individual pouches having a plurality of compartments; and*
- e) *wherein the first web of pouches formed in step a) is an open web containing a composition in powder form and the pouches formed in the second web are dual compartment pouches containing compositions in liquid form and having a side by-side configuration."*

The remaining claims 2 to 5 of the main request depend on claim 1 and define preferred embodiments of the process of claim 1.

- V. The opponent only objected to the main request for lack of inventive step (Article 56 EPC).
- VI. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request (labelled AHMR), submitted with letter dated 24 July 2018,

auxiliarily, that the patent be maintained on the basis of the claims of one of the first to third auxiliary Requests, submitted with letter dated 24 July 2018.

The respondent requested that the appeal be dismissed.

## Reasons for the Decision

### *Main request - inventive step*

1. Applying the problem-solution approach, the board came to the conclusion that the subject-matter of claim 1 involves an inventive step for the following reasons:
  - 1.1 Claim 1 at issue is directed to a process for making a detergent water-soluble multi-compartment pouch having compartments in a superposed configuration and compartments in a side-by-side configuration (herein after this kind of pouch is referred to as **complex multi-compartment water-soluble pouch**). It is apparent from the patent-in-suit (see e.g. paragraphs [0077] to [0079] and [0095]) and undisputed that the sealing required to occur in step "c)" of the claimed process may be carried out, *inter alia*, by heat sealing or wet sealing.
  - 1.2 The closest prior art
    - 1.2.1 Both parties considered the process for making a water-soluble multi-compartment pouch disclosed in D1 to represent a suitable starting point for the assessment of inventive step. In particular, the respondent considered the combination of claim 1 and paragraphs [0123] to [0127] of D1 to disclose the embodiment closest to the subject-matter of claim 1 at issue.

1.2.2 It is apparent to the board and undisputed that the portions of D1 under consideration directly and unambiguously disclose the use of sealing rollers (i.e. additional apparatuses different from the forming surfaces) to enact the actual sealing (by heating and/or by pressing) the two superposed webs.

1.2.3 In the respondent's opinion, however, the skilled reader of paragraph [0127] (in particular of the sentence reading: "Preferred wet or solvent sealing/welding methods include applying selectively solvent onto the area between the moulds, or on the closing material, by for example, spraying or printing this onto these areas, and then applying pressure onto these areas, to form the seal.") would also consider implicitly disclosed therein the evident option that the two webs can simply be wet sealed while still being held in the respective forming surfaces.

The disclosure of such (allegedly) evident option would be apparent to the skilled reader of [0127] of D1 because:

- neither [0127] nor the remainder of D1 required that at least one of the two webs has to be removed by its forming surface before the actual sealing;
- the use of sealing rollers for wet sealing the superposed webs was only mentioned as an example in [0127] (see the last sentence), and
- as also acknowledged by the appellant, the skilled person was already familiar with the techniques of wet sealing, which encompassed the direct combination and sealing of the parts from their forming surfaces.

Hence, in the respondent's opinion, the closest prior art would be represented by this allegedly implicitly disclosed embodiment of the process of D1 in which the two webs of pouches are wet sealed while still being held in the respective forming surfaces.

- 1.2.4 The board notes however that the above-cited wording of [0127] *per se* does not contain any indication as to which parts are used for "applying pressure" on the pre-wetted areas between the moulds.

Moreover, neither the mere absence in [0127] of any instruction to mandatorily remove the webs from their forming surfaces (as instead mandatory when using rollers) nor the fact that [0127] describes the use of sealing rollers just as an example, necessarily imply the disclosure that the wet sealing in this prior art process may also occur while both webs are still held in their forming surfaces.

The board finally notes that there is no evidence on file supporting the respondent's allegation that the common general knowledge on this technique also encompassed the concept of wet sealing two webs of e.g. water-soluble parts, formed using two distinct forming surfaces, by using directly their forming surfaces to bring the parts into contact and to exercise pressure to seal them. Moreover the appellant, although acknowledging that wet sealing was already a conventional technique, has disputed this unsupported allegation of the respondent.

The board therefore concludes that the passages of D1 under consideration do not provide the direct and unambiguous disclosure of a process in which the two



webs can be wet sealed while still being held in the respective forming surfaces.

1.2.5 Accordingly, the board finds that the closest prior art remains the process directly and unambiguously disclosed by the combination of claim 1 and paragraphs [0123] to [0127] of D1 already identified at 1.2.1 and 1.2.2, *supra*, i.e. a process (for making a water-soluble multi-compartment pouch with superposed compartments) in which sealing rollers are used for heat sealing or wet sealing two previously formed and superposed webs of pouches.

1.3 The technical problem addressed

It is common ground among the parties that the technical problem addressed in the patent in suit is that of providing a process for making a complex multi-compartment water-soluble pouch with an improved alignment of the superposed compartments. The board, also considering the content of [0009] of the patent in suit, sees no reason to take a different stance.

1.4 The solution

The proposed solution is a process having all the features defined in claim 1 of the main request (see IV, *supra*). In particular, in the claimed process the forming surfaces bring the two webs of pouches into contact and exert pressure on them to seal the webs, without requiring the intermediate step of removing one or two of the webs from the corresponding forming surface before combining it with the other web.

1.5 The success of the solution

1.5.1 It is apparent to the board that the claimed subject-matter achieves an improved alignment of the superposed compartments vis-à-vis the closest prior art because the use of sealing rollers in the process of D1 implies that, at some stage prior to the actual sealing, at least one of the webs has been removed from its forming surface. Hence, misalignment of the two superposed webs is predictably to occur in the process according to D1 because the removal from the mould inevitably allows more or less significant changes of the spacing among the pouches.

1.5.2 The board stresses that the respondent has only argued that the subject-matter of claim 1 does not achieve an improved alignment of the superposed compartments vis-à-vis the prior art because, in its opinion, the prior art disclosed in D1 also encompassed an embodiment in which the two webs of pouches were wet-sealed while still being held in the respective forming surfaces. Hence, no misalignment of the superposed compartments could possibly occur in this (allegedly implicitly disclosed) embodiment of the process of D1 either.

However, as already discussed above, such embodiment is found to be not directly and unambiguously disclosed in D1 (for the reasons given at 1.2.4, *supra*) and, thus, the respondent's line of reasoning necessarily fails.

1.5.3 The board concludes therefore that the subject-matter of claim 1 at issue solves the posed technical problem vis-à-vis the prior art.

1.6 Obviousness of the solution

1.6.1 Hence, the assessment of inventive step boils down to the question whether the skilled reader of D1, aiming at solving the posed technical problem, would consider obvious to modify this prior art process by, *inter alia*, removing the sealing rollers and using instead the two forming surfaces also for sealing the two webs.

1.6.2 The board stresses again that, as already mentioned above (see 1.2.4, *supra*), there is no evidence on file describing the conventional use of distinct forming surfaces onto which two distinct water-soluble parts were formed, to bring the parts into contact and exercise pressure to seal them.

Nor is it apparent to the board that any of the available documents discloses at least a pointer to the possibility to prepare pouches from parts previously formed onto two distinct forming surfaces, in which these latter surfaces are also used to bring the pre-formed parts into contact and to seal them.

Nor has the respondent referred to any further argument or document in its discussion of the present main request.

1.6.3 Hence, the board comes to the conclusion that at least the modification of the prior art required to arrive at the process of claim 1 of the main request that consists in using directly the two forming surfaces instead of sealing rollers, is not obvious in view of the prior art.

1.7 It follows from the above considerations that the subject-matter of claim 1 involves an inventive step

under Article 56 EPC.

2. The same applies to the remaining claims 2 to 5 of the main request, which define preferred embodiments of the process of claim 1, and therefore also meet the requirements of Article 56 EPC.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form on the basis of the claims of the main request filed with letter of 24 July 2018, and a description to be adapted where appropriate.

The Registrar:

The Chairman:



D. Magliano

J.-M. Schwaller

Decision electronically authenticated