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Datasheet for the decision of 6 June 2019

Case Number: T 0462/17 - 3.3.06

Application Number: 05750214.8

Publication Number: 1756257

IPC: C11D3/39, C11D3/48, B65B9/04, C11D17/04

Language of the proceedings: EN

Title of invention:
PROCESS FOR PREPARING WATER-SOLUBLE ARTICLES AND SUCH ARTICLES

Patent Proprietor:
Reckitt Benckiser Finish B.V.

Opponent:
Henkel AG & Co. KGaA

Headword:
Water-soluble article/Reckitt

Relevant legal provisions:
EPC Art. 52(1), 54(1), 54(2), 111(1)

Keyword:
Novelty - Main request, first and second auxiliary requests (no) - Third auxiliary request (yes)
Remittal to the department of first instance

Decisions cited:

Catchword:

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Beschwerdekammern

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Case Number: T 0462/17 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 6 June 2019

Appellant: (Patent Proprietor)	Reckitt Benckiser Finish B.V. Siriusdreef 14 2132 WT Hoofddorp (NL)
Representative:	Hodgetts, Catherine Dawn Reckitt Benckiser Corporate Services Limited Legal Department - Patents Group Dansom Lane Hull HU8 7DS (GB)
Respondent: (Opponent)	Henkel AG & Co. KGaA Henkelstrasse 67 40589 Düsseldorf (DE)
Representative:	Wagner Albiger & Partner Patentanwälte mbB Siegfried-Leopold-Straße 27 53225 Bonn (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 8 December 2016 revoking European patent No. 1756257 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	J.-M. Schwaller
Members:	G. Santavicca
	C. Heath

Summary of Facts and Submissions

I. The appeal lies from the decision of the Opposition Division to revoke European patent No. 1 756 257, with independent claims 1 and 16 thereof reading as follows:

"*1. A process for preparing a water-soluble article (1) comprising a water-soluble primary thermoformed component (2, 4) and a water-soluble secondary component (3) arranged inside the primary component, which comprises*
(a) forming the primary component (2, 4) into a pocket, by thermoforming in the cavity of a thermoforming mould that also has a recess to receive the secondary component (3);
(b) introducing the secondary component (3) into the inside of the pocket such that it is received in said recess;
(c) introducing the contents of the primary component into the pocket; and
(d) sealing the primary component (2, 4);
wherein the contents of the primary component (2, 4) are granulated and/or particulate solid(s), and the packing of said contents into the primary component (2, 4) is tight to ensure that the secondary component (3) is fixed in position in the recess of the primary component (2, 4)."

"*16. A water-soluble article (1) comprising a water-soluble primary component (2, 4) which is a thermoformed container containing a granulate and/or particulate solid primary composition, and a water-soluble secondary component (3) arranged on the inside of the thermoformed container in a recess thereof, the fixing of the secondary component (3) in position in the primary component (2, 4) being ensured by the*

tight packing of said solid primary composition into said primary component (2, 4)."

II. With its grounds of appeal the patent proprietor (hereinafter "the appellant") contested the decision and filed four sets of amended claims as first to fourth auxiliary requests. Further, it contended that in the decision a wrong interpretation had been given to the feature "*tight packing*" and that a number of embodiments had to be selected from the general teaching of D1 (WO 2004/014753 A1), and combined together to arrive at the claimed subject-matter.

III. The opponent (hereinafter the "respondent") maintained that D1 took away the novelty of the articles claimed in all of the auxiliary requests.

IV. At the oral proceedings, which took place on 6 June 2019, the Board found that the article defined in claim 16 of the main, first and second auxiliary requests lacked novelty over the disclosure of D1 but that the one defined in claim 15 of the third auxiliary was novel.

V. At the closure of the debate, the appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request), or in the auxiliary on the basis of one of the first to fourth auxiliary requests, all filed with the grounds of appeal of 12 April 2017.

The respondent (opponent) requested that the appeal be dismissed.

Reasons for the Decision

1. Main Request - patent as granted

1.1 *Construction of Claim 16*

1.1.1 The appellant, although acknowledging that the opposed patent does not contain a definition for the feature "*tight packing*", maintained that it should be construed as meaning that "the packing must be tight enough to fix the secondary component in position even in the absence of any other fixing means".

1.1.2 The Board cannot share this construction, because the feature "*tight packing*" defined in claim 16 is indeed broad but clear, insofar as it merely defines the tight packing of the granulated material as contributing to ensuring the fixing within the container of the secondary component. It follows that claim 16 does not define that the fixing of the secondary component is solely ensured by the tight packing.

This construction based on the claim itself is not contradicted by any of the further claims, nor by the description (see paragraphs [0009] to [0011]), which only mentions that tight packing helps to protect the secondary component, e.g. when sealing, and makes the shape of the article predictable and uniform. Indeed, this construction is also in line with the state of the art, e.g. D2 (WO 01/83669 A1; page 7, first paragraph).

1.1.3 Even if claim 1 were to be read narrowly in the light of the description, the latter does not support appellant's interpretation that "the packing must be

tight enough to fix the secondary component in position even in the absence of any other fixing means".

1.1.4 It follows therefrom that in assessing novelty (and inventive step) of in particular claim 16, the broadest meaning will be given to the feature "*tight packing*".

1.2 Claim 16 - Novelty

1.2.1 The appellant in particular argued that D1 did not disclose that the second component was held in position by the tight packing of the solid primary composition contained within the first component, nor a two-component article, as the article of D1 mandatorily comprises three components.

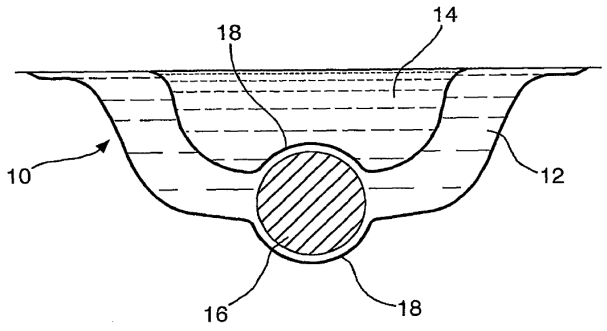
1.2.2 The Board does not share this view because as explained above, the feature "*tight packing*" cannot be given the particular meaning invoked by the appellant (i.e. sole means for holding the second component).

Further, the wording of claim 16 is open as regards the number of components of the claimed article due to the presence of the transition term "*comprising*".

1.2.3 Moreover, D1 discloses (Figure 1 (reproduced below); paragraph bridging pages 35 und 36; page 36, first full paragraph) a water-soluble article comprising a primary component (the water-soluble container 10) having a first compartment 12 containing an anhydrous laundry detergent composition and a water-soluble secondary component (the spacer 16), containing an enzyme and being surrounded by a coating of a water-soluble polymer, arranged on the inside of the container in a recess 18 thereof, whereby the fixing of the spacer 16 in position in the container 10 is (implicitly and unambiguously, as apparent from the construction shown

on Figure 1), also ensured by the tight packing of said anhydrous laundry detergent composition into said container 10.

Fig.1.



1.2.4 As regards the question whether the feature "anhydrous laundry detergent composition" is a "*granulate and/or particulate solid*" as defined in claim 16, D1 generally discloses (page 14, last paragraph, third and fourth sentences) that once formed, the primary component/ container/pocket shown in Figure 1 can be filled with a particulate or granulated solid.

1.2.5 The feature "*thermoformed*" (as defined in claim 16 at issue) does not impart any structural distinction over the container of D1, which can also be thermoformed (D1, page 13, line 6).

1.2.6 It follows from the foregoing that D1, in particular the embodiment of figure 1, takes away the novelty of the article defined in claim 16 as granted, with the consequence that the main request is not allowable.

2. First auxiliary request - Novelty

3. Claim 16 of this request is distinguished from claim 1 of the main request in that: "*the secondary component (3) is a container containing a secondary composition*".

3.1 D1 (page 36, lines 8-9) discloses that in the embodiment according to figure 1 the spacer 16 (i.e. the second component according to claim 1 at issue) contains an enzyme and is surrounded by a coating of a water-soluble polymer, as well as that said coating produces a film thereon upon drying/setting, to form the housing (i.e. a container).

3.2 Thus, also the article of claim 16 according to the first auxiliary request lacks novelty over D1 with the consequence that the first auxiliary request is not allowable, either.

4. Second auxiliary request

4.1 Claim 16 of this request is distinguished from claim 16 of the first auxiliary request in that "*the secondary component (3) is thermoformed and comprises a polymeric film*".

4.2 D1 (page 36, last sentence) not only discloses that in the embodiment according to figure 1 the spacer 16 contains an enzyme and is surrounded by a coating of a water-soluble polymer, but also that said coating produces a film thereon upon drying/setting, to form the housing. The further amended feature *"the secondary component (3) is thermoformed"* merely indicates how that member is formed without imparting any structural distinction thereto; in any case not over D1 (see page 7, line 4), which even mentions the "thermoforming" as an option for forming the housing of the spacer.

4.3 Thus, also the article of claim 16 according to the second auxiliary request lacks novelty over D1 with the consequence that the second auxiliary request is not allowable, either.

5. Third auxiliary request - Amendments

5.1 With respect to claims 1 and 16 of the main request, the amendments in claims 1 and 15 of this request are respectively the following:

"*wherein the secondary component (3) is a container containing a secondary liquid or gel composition, wherein the secondary component (3) comprises a polymeric film and has been made by thermoforming*";

"*wherein the secondary component (3) is a container containing a secondary liquid or gel composition, wherein the secondary component (3) is thermoformed and comprises a polymeric film*".

5.2 The formal allowability of these claims is not in dispute, in so far as the additional features are disclosed in a general way in claims 18 and 19 and the description at page 8, lines 12-17, of the application as filed.

5.3 Third auxiliary request - Novelty

5.3.1 The Board shares appellant's view that the new feature "*a secondary liquid or gel composition*" is not disclosed in D1, let alone in combination with the other features of claim 15, or of claim 1, as D1 mentions an enzyme, which is typically added in solid form into laundry detergent formulations.

5.3.2 D1 (page 36, last sentence) moreover discloses that in the embodiment according to figure 1 the spacer 16 contains an enzyme and is surrounded by a coating of a water-soluble polymer, as well as that said coating

produces a film thereon upon drying/setting, to form the housing.

This passage of D1 does not mention whether the enzyme is in the solid state, but that it is surrounded by a coating. It is common knowledge that a solid body can be coated, and that a liquid or fluid composition may not, as the latter does not have an own form, but takes the form of any container containing it.

5.3.3 In its general description on page 7 (which is applicable to all embodiments of D1), in particular lines 4-7, 10-12 and 15-17, D1 discloses (in relation to the coating with a polymer) that a coating is preferably formed "for enclosing a relatively small volume of solid" (lines 11-12). This disclosure directly applies also to the last sentence of page 36, mentioning that a coating surrounds the enzyme, which is thus in solid form as argued by the appellant.

5.3.4 To back up its objection of lack of novelty, the respondent also invoked the combination of claims 9, 8, 7 and 1, and of the general disclosure on pages 6 and 14, against the article of claim 15.

5.3.5 The board cannot accept this argument, because the combination of the invoked claims does not mention the nature of the compositions, which is only described in several lists on pages 6 (spacer, lines 18-29, which is preferably an enzyme) and 14 (primary composition, last paragraph), hence which require a selection to be made. In addition, this combination does not directly indicate whether the recess for the spacer is in the first or second container.

5.3.6 It follows that D1 does not directly and unambiguously disclose an article with the feature "*a secondary liquid or gel composition*", let alone in combination with all of the features of claim 15, such as the combination of a secondary liquid or gel composition with a primary composition in form of granulated or particulate solid. D1 thus does not take away the novelty of the article defined in claim 15 of this request.

5.3.7 This conclusion applies *a fortiori* to the process of claim 1, the novelty of which was not contested.

6. Remittal

Since the reasons that led to the revocation of the patent no longer apply and since the Opposition Division only decided in respect to novelty over D1 and did not at all consider the issue of inventive step, the Board considers it appropriate to allow the appellant's (and from the respondent uncontested) request for remittal of the case to the Opposition Division for further prosecution (Article 111(1) 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 for further prosecution on the basis of the Third Auxiliary Request filed with the grounds of appeal dated 12 April 2017.

The Registrar: The Chairman:

D. Magliano J.-M. Schwaller

Decision electronically authenticated