

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 2 June 2021**

Case Number: T 0339/18 - 3.3.06

Application Number: 09765764.7

Publication Number: 2300586

IPC: C11D3/37, C11D11/00, C11D3/386

Language of the proceedings: EN

Title of invention:
IMPROVEMENTS RELATING TO FABRIC CLEANING

Patent Proprietors:
1) Unilever PLC
2) Unilever N.V.

Opponent:
THE PROCTER & GAMBLE COMPANY

Headword:
Fabric cleaning/Unilever

Relevant legal provisions:
EPC Art. 56, 84
EPC R. 80
RPBA 2020 Art. 13

Keyword:

Inventive step - (no) - main request (patent as granted)
Late-filed auxiliary requests - claim requests clearly
allowable (no)

Decisions cited:

T 1286/14, G 0010/91, T 0736/95

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0339/18 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 2 June 2021

Appellant:

(Opponent)

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

Representative:

Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Respondent:

(Patent Proprietor 1)

Unilever PLC
A company registered in England and Wales
Under company no. 41424
Unilever House
100 Victoria Embankment
London
Greater London EC4P 4BQ (GB)

Respondent:

(Patent Proprietor 2)

Unilever N.V.
Weena 455
3013 AL Rotterdam (NL)

Representative:

Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 20 November
2017 rejecting the opposition filed against
European patent No. 2300586 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: G. Santavicca
 E. Mille

Summary of Facts and Submissions

I. The appeal lies from the decision of the Opposition Division rejecting the opposition filed against European patent No. 2 300 586, claims 1 and 2 thereof reading as follows:

"1. A method of laundering fabric which comprises the steps of:

a) providing a pourable liquid detergent composition comprising ethoxylated polyethyleneimine, soil release polymer, 10-40% wt of surfactant, essentially consisting of nonionic and/or anionic and/or zwitterionic surfactant, which 10-40% wt of surfactant preferably passes the Calcium Tolerance Test described herein, and in addition, no more than 15% wt, preferably no more than 10%wt, of a soap, with the proviso that any soap present is present as a minority in wt% terms of the total surfactant, wherein the ratio of non-soap surfactant to ethoxylated polyethyleneimine is from 2:1 to 7:1,

b) diluting a dose of said detergent composition in water by a factor of greater than 500 to obtain a wash liquor which comprises 0.8 to 0.035 g/l of non-soap surfactant, and,

c) washing fabrics with the wash liquor so formed."

"2. A method of laundering fabric which comprises the steps of:

a) providing a multidose container which contains a pourable liquid detergent composition comprising ethoxylated polyethyleneimine, soil release polymer, 10-40% wt of surfactant, essentially consisting of nonionic and/or anionic and/or zwitterionic surfactant, and in addition, no more than 15% wt, preferably no

more than 10%wt, of a soap, with the proviso that any soap present is present as a minority in wt% terms of the total surfactant,

b) mixing a dose of the detergent composition comprising 4 to 8 g non-soap surfactant, at least 0.5 g of soil release polymer and at least 0.5 g of the ethoxylated polyethyleneimine, with water to obtain a wash liquor, wherein the ratio of non-soap surfactant to ethoxylated polyethyleneimine is from 2:1 to 7:1, and

c) washing fabrics with the wash liquor so formed."

- II. In the contested decision, the Opposition Division did not admit the late-filed ground for opposition under Article 100(c) EPC, acknowledged novelty over D3 (WO 97/42294 A1) and found that the claimed subject-matter was not obvious over D2 (WO 2006/113314 A1) taken as the closest prior art, even if combined with D16 (WO 2006/113315 A2).
- III. With its statement of grounds, the opponent submitted a new document D17 (Liquid Detergents, 2nd Ed., vol. 129, Chapter 8, pp. 290, 2005, edited by K.Y. Lai), maintained its former objections and argued that the Opposition Division had erred at not admitting its new ground for opposition.
- IV. With its reply, the respondent/patent proprietors filed amended claims as auxiliary requests 1 to 6, requested to dismiss the appeal and to admit neither D17 nor the late-filed new ground for opposition.
- V. In its preliminary opinion, the board saw no reason for admitting the new ground for opposition but held D17 to be admissible. Furthermore it acknowledged novelty over D3 but held obvious the subject-matter of the claims as

granted over D2. The board further raised objections under Article 123(2) EPC against the auxiliary requests and concerning inventive step, it drew attention to the combination of D2 with D16.

- VI. In response thereto the respondent submitted new auxiliary requests 1 to 5 with letter dated 5 May 2021 and maintained auxiliary request 6.
- VII. The appellant requested not to admit the new auxiliary requests.
- VIII. At the oral proceedings, which took place on 2 June 2021, inventive step of claim 1 of the main request was discussed taking D2 as the closest prior art, possibly combined with D16 and/or D17. Further the admittance of the auxiliary requests was discussed.
- IX. The final requests of the parties were as follows:

The **Appellant** (Opponent) requested that the decision under appeal be set aside and the patent be revoked, that the new ground of appeal be admitted into the appeal proceedings and that auxiliary requests 1 to 5 not be admitted.

The **Respondent** (Patent Proprietors) requested that the appeal be dismissed and the patent maintained as granted (main request) or, alternatively, on the basis of one of auxiliary requests 1 to 5 filed with letter dated 5 May 2021 or of auxiliary request 6 filed with letter dated 24 August 2016.

Reasons for the Decision

- 1. Admittance of the new ground under Article 100(c) EPC

- 1.1 This new ground for opposition was filed with letter of 21 July 2017, i.e. outside the time limit set by Article 99(1) EPC.
- 1.2 For the board, the Opposition Division correctly found that deciding on its admittance was within its discretion.
 - 1.2.1 In this respect the first instance questioned whether it was *prima facie* evident that a violation of Article 123(2) EPC was present as the opponent had obviously not noticed it when drafting the notice of opposition, and found that upon taking into account the complete disclosure of the original application, including the examples, it was clear that non-soap surfactants (NSS) were present at a ratio to ethoxylated polyethyleneimine (EPEI) polymers of 2:1 to 7:1, so that the ratio NSS/EPEI of 1:2 to 1:7 disclosed on page 12, lines 13 to 19, of the original application was evidently erroneous, and the obvious rectification was to swap the numerical ratio.

Further, the disclosure on page 12 did not link the amount of the polyethyleneimine (PEI) polymers with the disclosed ratio based on the EPEI, and in any case the amount of PEI was anyhow limited by the amended ratio to a value falling within the originally disclosed range for all PEI polymers. Although granted claim 2 referred to the ratio of NSS to EPEI in step b), i.e. after dilution, as no further actives were added upon dilution in step (b), the claimed ratio present in the wash liquor after dilution was the same as that of the detergent composition in step a) of claim 1. Finally, the subject-matter of either of claims 1 and 2 was not based on multiple selections from different lists, as there was ample support in the original application

(e.g. page 38, lines 22 to 25) for compositions comprising additionally a soil release polymer (SRP) together with EPEI polymers.

- 1.2.2 The Opposition Division thus decided **not** to admit the late-filed ground for opposition under Article 100(c) EPC into the opposition proceedings in view of its lack of *prima facie* relevance.
- 1.3 According to an established principle (Case Law of the boards of Appeal of the EPO, 2019, IV.C.4.5.2) a board will only overrule a first instance discretionary decision if it was taken according to wrong principles, or without taking into account the right principles, or in unreasonable way, and thus exceeding the proper limits of the discretion.
- 1.4 In this respect, the present case is very similar if not identical (procedurally) to that dealt with in **T 1286/14**, as the patent proprietor did not consent to the admittance of the late-filed new ground for opposition not admitted by the Opposition Division.
 - 1.4.1 In T 1286/14 the board addressed the limited scope for reviewing exercises of discretion to refuse a "fresh ground for opposition" where the proprietor objects to its admittance on appeal. In the case at issue, the opposition division had considered a late-filed ground irrelevant and refused to admit it. In such circumstances, it was sufficient for the board to establish that there was evidence that the opposition division had actually examined whether the ground was *prima facie* relevant and given reasons for its finding on this. So, instead of reviewing whether the opposition division had examined such *prima facie* relevance "correctly" in substance, it merely had to

check that such an examination had demonstrably been conducted. In other words, its duty to review the exercise of discretion was limited. The competent board, citing G 10/91 (OJ 1993, 420), thus refrained from examining the substance of the fresh ground, thereby following the approach taken in decisions such as T 736/95 (OJ 2001, 191) and rejecting that entailing a thorough review of the earlier exercise of discretion on its merits, as taken in other decisions mentioned in that section of the case law.

- 1.5 In the present case, the board follows the rationale of T 1286/14 and takes the view that it is apparent from the decision under appeal that the Opposition Division has actually examined whether the ground was *prima facie* relevant and given reasons for its finding on this, as summarised above.

Therefore, the board's duty to review the exercise of discretion is limited, and does not extend to reviewing whether the opposition division has examined such non *prima facie* relevance "**correctly**" in substance.

- 1.6 It follows from the foregoing that the new ground for opposition under Article 100(c) EPC cannot be admitted into the appeal proceedings without the consent of the patent proprietor.

2. Admittance of the late filed item of evidence

D17 was filed with the grounds of appeal in reaction to the decision under appeal and evidently concerns common general knowledge in dispute on the role of soil release polymers. Hence, for the board, it is clearly admissible into these appeal proceedings.

3. Main request - Inventive step

3.1 The patent concerns an improved process for laundering fabrics using a concentrated detergent (paragraph [0001]) and addresses ([0011]) the benefits on the environmental footprint of a laundering process that may be obtained by using low dosages of concentrated products of a specific formulation class at high dilution. Further, the fully formulated products according to the invention exhibit better removal of dirt and stains than commercial products which, in use, are dosed at higher surfactant levels.

3.2 D2, that the parties acknowledged at the oral proceedings as representing the closest state of the art, is also acknowledged in the patent in suit ([0009] and [0010]) and relates to liquid detergent compositions having first wash lipase enzymes and modified polyethyleneimine polymers used for improved grease and oil soil cleaning (page 1, first paragraph).

3.2.1 D2 departs from the improved removal of greasy soils that is a constant aim for laundry detergent manufacturers. In spite of the use of many effective surfactants and combinations of surfactants, especially when used at low water temperatures, many surfactant-based products still do not achieve complete removal of greasy/oily soils (page 1, second paragraph). More recently, higher efficiency lipases have been developed that also work effectively during the wash phase of the cleaning process, so that as well as cleaning in the second washing step a significant improvement in cleaning effect due to lipase can be found in the first wash-cycle. Known examples of such enzymes are referred to as first wash lipases (page 1, third paragraph).

According to D2, the problem that faced the inventors was to maximise performance with this new generation of enzymes (page 1, fourth paragraph), and the solution adopted was to combine first wash lipases with modified polyethyleneimine polymers in a liquid detergent composition, thus improving grease and oil cleaning while giving stable liquid detergent compositions (page 1, fourth paragraph) versus commercially available lipase enzymes such as LIPOLASE® (paragraph bridging pages 1 and 2).

- 3.2.2 The liquid laundry detergent composition used in the method of D2 (see claim 1) comprises *inter alia*:
- (a) from 5 to 20000 LU/g of a first wash lipase (Lipex);
 - (b) from 0.01 wt% to 10 wt% by weight of the composition of a modified polyethyleneimine polymer comprising a polyethyleneimine backbone of about 300 to about 10000 weight average molecular weight; the modification of the polyethyleneimine backbone being *inter alia* one or two alkoxylation modifications per nitrogen atom in the polyethyleneimine backbone; and
 - (c) the balance of the composition comprising a liquid carrier.
- 3.2.3 According to claim 4, the above composition further comprises
- (d) a surfactant system comprising from 5 to 30% by weight of the composition of an ethoxylated C₁₀-C₁₈ alkyl ethoxy sulfate, as well as (page 12, lines 1-4)
 - (e) from 0 to 7 wt% of a co-surfactant, i.e. further nonionic or anionic surfactants, so that the NSS amount can range from 5 to 37 wt%.
- 3.2.4 D2 thus does not literally disclose any generic or specific ratio between NSS and EPEI.

3.2.5 D2 however also discloses (last two paragraphs on page 18) a method of removing soils and stains, in the passage reading: "*The compositions of this invention, prepared as hereinbefore described, can be used directly onto fabrics or used to form aqueous washing solutions for use in the laundering of fabrics. Generally, an effective amount of such compositions is added directly to the fabric or directly to water, preferably in a conventional fabric laundering automatic washing machine, to form such aqueous laundering solutions. As used herein "effective amount" refers to an amount providing the desired cleaning benefits of greasy soils and oily soils. The aqueous washing solution so formed is then contacted, preferably under agitation, with the fabrics to be laundered therewith. An effective amount of the liquid detergent compositions herein added fabric is from 0.5 mL to 10 mL of the composition. An effective amount of the liquid detergent composition herein added to water to form aqueous laundering solutions can comprise amounts sufficient to form from about 500 to 7,000 ppm of composition in aqueous washing solution. More preferably, from about 1,000 to 3,000 ppm of the detergent compositions herein will be provided in aqueous washing solution.*"

3.2.6 The board observes that it is not in dispute that the compositions of Examples A to D of D2 disclose the closest embodiments, with the composition of Example C being the closest in terms of common features with the composition used in the method of claim 1 at issue.

3.2.7 In particular, the exemplified compositions comprise the following components:

C₁₂₋₁₅ alkyl ethoxy (1.8) sulfate, (a **NSS**)

C₁₂₋₁₃ ethoxylated (9) alcohol, (a **NSS**)

C₁₁₋₁₂ linear alkyl benzene sulfonate, (a **NSS**)
 C₁₂₋₁₄ dimethyl amine oxide;, (a **NSS**)
 C₁₂₋₁₈ fatty acid, (a **Soap** precursor),
 PEI(backbone Mw 1600), Ethoxylated (EO20), (a **EPEI**),
 Polymer⁴, (a **EPEI**), (defined under Table 1 as being of Formula (I) or (II), described at page 8 of D2 under the hearing "Modified Polyethyleneimine Polymer" (starting at page 6). As can be seen from formulae (I) and (II), n refers to the number of ethylene oxide units in the polymer)

3.2.8 Based upon the above definitions, the formulations of Examples A-D of D2 have following (uncontested) contents and ratios of NSS:EPEI.

Example	A	B	C	D
NSS (wt%)	16.5	22.48	12.38	11.28
EPEI (wt%)	1.65	1.65	1.49	1.32
NSS:EPEI	10:1	13.6:1	8.3:1	8.5:1

The lowest ratio NSS/EPEI is that of Example C (8.3/1).

3.2.9 The method of claim 1 at issue is thus distinguished from Example C of D2 in that the NSS/EPEI ratio of the composition is from 2:1 to 7:1 and the composition is dosed at the defined dilution ratio range.

3.3 Technical problem underlying the invention

3.3.1 The respondent has formulated the technical problem in the light of D2 as being the provision of a method of laundering fabrics providing improved washing performance across a range of stains, despite lowering the surfactant levels.

3.3.2 This formulation corresponds in essence to the one in the application as filed on which the patent in suit

(see [0011], last sentence) was granted, in particular over the closest prior art D2.

3.4 Solution

3.4.1 As to the proposed solution, the patent in suit proposes *inter alia* the laundering method according to claim 1, which is in particular characterised by said ratio between NSS and EPEI and said dilution factor.

3.5 Success of the solution

3.5.1 The examples of the patent in suit are not conclusive on whether the alleged effect can also be obtained outside the claimed ratio, despite the fact that from the results in Tables 8 and 9, it is apparent that at the lowest ratio of 2:1 the SRI value is highest, and that when going from 2:1 to higher ratio values the RSI value decreases. It is however not clear what happens below 2:1 and above 8:1.

3.5.2 Comparative examples D13 (filed by the patent proprietors) concern compositions with high amounts of both EPEI and soil release polymer. However, in claim 1 at issue, the latter can be present in even small amounts.

3.5.3 As to the dilution factor defined in claim 1, in comparison to values outside the claimed range, the patent proprietors have not shown any advantage, but in the absence of counter-evidence, the board accepts that the technical problem as formulated by the respondent is effectively solved in respect of the claimed NSS/EPEI ratio.

3.6 Obviousness

3.6.1 The question which arises is whether the skilled person starting from D2 and faced with said technical problem would have found any motivation, without the benefit of hindsight, for increasing the EPEI amount in the dosage of the detergent of D2 in the expectation of an improved laundering performance, and whether in doing so he would have arrived at a composition falling within the ambit of Claim 1 at issue.

3.6.2 As regards the examples of D2, in particular example C, they do not disclose the dilution ratio when in use. Moreover, the composition of example C has a NSS/EPEI ratio higher (about 8:1) than the claimed ratio of up to 7:1.

3.6.3 With respect to the dilution ratio, D2 discloses a method of removing soils and stains (last paragraph on page 18) as follows: "*An effective amount of the liquid detergent composition herein added to water to form aqueous laundering solutions can comprise amounts sufficient to form from about 500 to 7,000 ppm of composition in aqueous washing solution. More preferably, from about 1,000 to 3,000 ppm of the detergent compositions herein will be provided in aqueous washing solution.*"

The patent in suit ([0010]) itself acknowledges that a Non-Soap Surfactant (NSS) content of 11 to 21 wt.%, as disclosed in the examples of D2, provides a preferred wash solution non-soap surfactant concentration of from 0,1 to 0,6 g/l (i.e. a dilution factor as defined in claim 1).

Thus, in the method of laundering fabrics disclosed by

D2, the dilution ratio range used for e.g. composition C falls within or at least overlaps with that defined in claim 1 at issue.

The argument of the respondent that D2 does not make clear whether the compositions illustrated in its examples are applied directly to the fabric or diluted does not convince, because the compositions of the examples of D2 are clearly applicable in diluted form with the stated dilution ratio.

- 3.6.4 In respect of the distinguishing lower NSS/EPEI ratio as claimed, the board remarks that the patent in suit [0010] (sentence bridging pages 2 and 3) acknowledges that *"although the general disclosure of D2 allows for high levels of EPEI, the actual levels (i.e. those specifically disclosed in the examples thereof) used are too low to realise the benefit from the low dose of surfactant to the wash from a low volume dose of the composition"*.

The board further notes that the amount of NSS in the examples of D2, in particular in Composition C (about 12 wt.-%), is far away from the most preferred maximum of D2 whilst the amount of EPEI (1.49) is at about the minimum of the range disclosed in D2, and at about the middle part of the most preferred range disclosed by D2 (up to 3 wt.-%).

In fact, D2 (e.g. claim 1) teaches that the level of EPEI can be as high as 10 wt% (which, if compared to the maximum of NSS of 37 wt%, implicitly results in a ratio NSS/EPEI as claimed).

D2 (page 1, first three lines and last full paragraph; paragraph bridging pages 1 and 2) moreover teaches that

the use of modified polyethyleneimine (in D2 the most preferred and only one exemplified modified polyethyleneimine is ethoxylated polyethylene imine) in combination with lipase enzymes in a liquid detergent composition gives rise to:

- improved grease and oil cleaning results; and
- an acceptably stable liquid detergent composition, which evidently applies across the amount ranges for lipase and polyethyleneimine given in D2.

The fact that D2 does not disclose which effect might be obtained by increasing the level of EPEI beyond the improved effect in combination with lipase, as argued by the respondent, is thus not decisive, as a wash improvement is anyhow attained by using EPEI in combination with the lipase, the presence of which is not excluded by claim 1 at issue. Indeed, in this respect, the examples of D2 show that a constant level of lipase (3.2 mg/100g) is accompanied by a constant level of EPEI according to formulae I and II (1 wt.-%) and by a variable level of another EPEI (note 2 under Table 1). Hence, in the combined use of lipase and EPEI of D2, the skilled person has the possibility of modifying both in proportion or to further adjust the level of a further EPEI, of course within the disclosed (preferred) ranges.

The skilled person seeking to attain improved grease and oil cleaning results would thus manifestly try to use lipase and EPEI at least within the (most) preferred EPEI amounts of respectively up to 5 wt% or up to 3 wt% of D2, e.g. in compositions such as those of the examples, which also include soil release polymers. Indeed, as argued by the appellant, already with an increase from 1.49 % (as in composition C) to 1.7 wt% of EPEI, hence well within the most preferred

range of up to 3 wt.-% of EPEI, the skilled person would arrive in an obvious way to the claimed method.

Thus the skilled person had a motivation to increase the EPEI amount (as taught in D2) above the respective amount in example C (which would inevitably lead to a ratio NSS/EPEI of 7:1 or lower) already because D2 is directed towards using modified polyethyleneimines for improved grease and oil soil cleaning.

3.6.5 The method of claim 1 at issue was thus obvious over that of D2 alone.

3.7 It follows that the main request is not allowable because the ground of opposition under Article 100(a) EPC (lack of an inventive step) prejudices the maintenance of the patent as granted.

4. Auxiliary Requests 1 to 6

4.1 Admittance

At the beginning of the oral proceedings, the board stressed that the admittance of these late-filed (just before the oral proceedings) auxiliary requests was at the board's discretion *inter alia* under Article 13 RPBA 2020. The board expressed in particular serious concerns on the admittance of all these requests apart from auxiliary requests 5 and 6, which were pending during the opposition proceedings and at the beginning of appeal proceedings, since auxiliary requests 1 to 4 as such had never been at issue before, and since no exceptional circumstances justifying their late filing was apparent. In any case, at the oral proceedings, it became clear that these auxiliary requests were *prima*

facie not clearly allowable (T 1286/14, reasons 2.2.2), for the following reasons:

4.1.1 Auxiliary request 1

4.1.2 According to the patent proprietors, claims 1 and 2 of this request were only supplemented by the features of granted claim 6, namely as follows:

"1. A method of laundering fabric which comprises the steps of:

*a) providing a pourable liquid detergent composition comprising ethoxylated polyethyleneimine, soil release polymer **at a level of from 3 wt% to 9.0 wt% of the composition**, 10-40% wt of surfactant, [...]."*

"2. A method of laundering fabric which comprises the steps of:

*a) providing a multidose container which contains a pourable liquid detergent composition comprising ethoxylated polyethyleneimine, soil release polymer **at a level of from 3 wt% to 9.0 wt% of the composition**, 10-40% wt of surfactant, [...]."*

4.1.3 However, the appellant and the board spotted further substantial amendments in claims 2 and 5 as follows:

"2. A method of laundering fabric which comprises the steps of:

a) [...],

*b) mixing a dose of the detergent composition comprising 4 to 8 g non-soap surfactant, at least 0.5 g of soil release polymer and at least 0.5 g of **a the** ~~ethoxylated~~ polyethyleneimine, with water to obtain a wash liquor, wherein the ratio of non-soap surfactant*

*to ethoxylated polyethyleneimine is from 2:1 to 7:1,
and*

c) [...]."

*"5. A method according to any preceding claim wherein
the composition comprises **a ethoxylated**
polyethyleneimine, at a level of 0.01 to 25 wt%,
preferably more than 3 and/or less than 9.5 wt% of the
composition, most preferably 4 to 9 wt% of the
composition."*

4.1.4 These further amendments are *prima facie* objectionable at least because the deletion of "ethoxylated" from the feature "~~ethoxylated~~ polyethyleneimine", which was present in the claims as granted and essential in particular with respect to the ratio between NSS and **ethoxylated** polyethyleneimines (now also in step b of claim 2), renders the claims unclear (Article 84 EPC). Furthermore these amendments, especially in dependent claim 5, do not overcome any of the invoked grounds for opposition (Rule 80 EPC).

4.1.5 Therefore, late-filed auxiliary request 1 is *prima facie* not clearly allowable under the EPC.

4.2 Auxiliary requests 2 to 4

4.2.1 The same amendments to claims 2 and 5 of auxiliary request 1 are contained respectively in each claim 2 and each claim 5 of auxiliary requests 2 and 4.

Moreover, also the amendment in each claim 1 of auxiliary requests 2 and 3, respectively reading:

"1. A method of laundering fabric which comprises the steps of:

a) *providing a pourable liquid detergent composition comprising a polyethyleneimine at a level of more than 3 wt% of the composition, ethoxylated polyethyleneimine, soil release polymer, 10-40% wt of surfactant, [...]."*

and

"1. *A method of laundering fabric which comprises the steps of:*

a) *providing a pourable liquid detergent composition comprising a polyethyleneimine at a level of 4 to 9 wt% of the composition, ethoxylated polyethyleneimine, soil release polymer, 10-40% wt of surfactant, [...]."*

introduce ambiguity, and thus gives rise to an objection of lack of clarity (Article 84 EPC), due to the simultaneous presence in the claim of the features "polyethyleneimine" and "ethoxylated polyethyleneimine".

Consequently, also auxiliary requests 2 to 4 are *prima facie* not clearly allowable (Article 84, Rule 80 EPC).

4.3 Auxiliary requests 5 and 6

4.3.1 The amendments to claims 2 and 5 of auxiliary request 1 are contained in each claim 2 of auxiliary requests 5 and 6, as well as in claim 4 of auxiliary request 5 and in claim 5 of auxiliary request 6.

4.3.2 Moreover, the method of claim 1 of auxiliary request 5 is limited by the feature "*and wherein the composition comprises 5 to 20000 LU/g lipase*", not imparting any distinction over that of D2/example C, containing this

enzyme in an amount as now defined. Prompted by the board, the respondent did not comment on this issue.

4.3.3 Finally, claims 1 and 2 of auxiliary request 6 contain an amendment "**greater than 2% wt. of soil release polymer**", which was not present in the claims as granted or as originally filed, which has thus been taken from the description, and which consequently raises questions under Article 123(2) EPC.

4.3.4 Hence, in view of the above objections, also auxiliary requests 5 and 6 are (clearly) not allowable, at least under Article 84 and Rule 80 EPC, or, auxiliary request 5, under Article 56 EPC and, auxiliary request 6, under Article 13 RPBA 2020 (Article 123(2) EPC).

5. It follows that none of the requests on file is allowable.

Order

For these reasons it is decided that:

1. The appealed decision is set aside
2. The patent is revoked.

The Registrar:

The Chairman:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated