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**Datasheet for the decision
of 5 July 2021**

Case Number: T 2249/18 - 3.3.06

Application Number: 14728578.7

Publication Number: 3013934

IPC: C11D17/04, C11D11/00,
C11D3/386, D06F39/02

Language of the proceedings: EN

Title of invention:

STAIN TREATMENT DEVICE AND PROCESS

Applicants:

- 1) Unilever PLC, a company registered in England and Wales under company no. 41424
- 2) Unilever N.V.

Headword:

Stain treatment device / UNILEVER P.L.C./N.V.

Relevant legal provisions:

RPBA 2020 Art. 13(1) sentence 4
EPC Art. 123(2), 56

Keyword:

Amendment to appeal case - amendment overcomes new issues raised (admitted)

Amendments - allowable (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 2249/18 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 5 July 2021

Appellant: Unilever PLC, a company registered in England and
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Appellant: Unilever N.V.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 10 April 2018
refusing European patent application No.
14728578.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Santavicca
Members: P. Ammendola
C. Heath

Summary of Facts and Submissions

- I. This appeal was filed by the applicants (hereinafter, the **appellants**) against the decision of the examining division to refuse European patent application 14728578.7, because the subject-matter of the claims according to then pending sole request was obvious in view of the prior art disclosed in D1 (WO 2012/175987 A1) or in view of the combination of D1 with D2 (WO 2009/156317 A1).
- II. The board summoned the appellants to oral proceedings.
- III. In response to the Board's communication in preparation for oral proceedings, with letter dated 20 April 2021, the appellants filed two sets of amended claims labelled as main request and auxiliary request, replacing the requests previously on file.
- IV. With a further communication of 12 May 2021, the board informed the appellants, *inter alia*, that (only) the auxiliary request appeared both admissible and to comply with the EPC and, therefore, that the oral proceedings would be cancelled if the appellants made the auxiliary request filed with letter of 20 April 2021 their only claim request.
- V. With letter of 14 May 2021 the appellants requested that the auxiliary request filed with letter dated 20 April 2021 be considered as their new main request.
- VI. The set oral proceedings were therefore cancelled.
- VII. The board understands from the content of the file that the appellants' final requests are that the decision

under appeal by set aside and that a patent be granted on the basis of claims 1 to 5 of the main request (set of claims labelled as auxiliary request filed with letter dated 20 April 2021).

Hereinafter this set of claims will be referred thereto simply as **main request**.

VIII. The main request comprises five claims.

Claim 1 reads as follows (the differences vis-à-vis claim 1 as originally filed are made apparent):

"1. A fabric stain treatment device (1) for treating a stain on a fabric with a fabric stain treatment composition during a fabric washing process, the fabric stain treatment device (1) comprising:
(a) a storage chamber (7) for storing the fabric stain treatment composition, said storage chamber (7) comprising two adjacent convex walls (3,5) in a stacked arrangement with an upper wall (3) and an lower wall (5); and a waist portion;
(b) a filling and dispensing aperture (11) defined by one or more upper edge portions (13) of the storage chamber, said edge portion/s comprising a pour spout (15); and
(c) a base (21) the periphery of which is contiguous with the lower wall; said base (21) and lower wall interconnecting at a base edge portion at least one annular scrubbing portion on a base edge portion (23), wherein the device appears as two stacked and aligned (longitudinally) truncated spheres and the adjacent walls converge to co-join each other thereby defining a curved cleft indentation (9) in at least the outer surface of the storage chamber thereby providing said waist portion (19) and wherein the storage chamber (7)

comprises an inner surface of the fabric stain treatment device which mirrors the outer surface and there is at least one internally projecting edge portion provided by the cleft, wherein the waist region (19) is for the user's fingers to intuitively grasp, encouraged by the curvature to move toward the peak of the curved cleft and the convexity of the two walls providing a gripping action."

Claims 2 and 3, which describe preferred embodiments of the device of claim 1, are respectively identical to Claims 2 and 5 as originally filed.

Claim 4 is identical to claim 10 as originally filed. It reads as follows:

"4. A process for treating fabric stains with a fabric stain treatment composition during a fabric washing process comprising the steps of:
(a) charging with the fabric stain treatment composition, the stain treatment device according to any preceding claim;
(b) pouring at least a portion of the fabric stain treatment composition from the stain treatment device on to a fabric stain via the pour spout;
(c) holding the stain treatment device at the waist portion and scrubbing the fabric with the annular scrubbing portion and then optionally,
(d) placing the device and the remaining composition and the fabric into a washing machine to undergo a washing process therein."

The remaining claim 5 of the main request, which describes a preferred embodiment of the process of claim 4, is identical to original claim 11, renumbered where necessary.

Reasons for the Decision

Main request

1. Admittance of the main request

The board notes that this claim request has been filed with letter dated 20 April 2021 particularly to address a number of new issues raised by the board in its communication dated 23 December 2020. In fact, such request overcomes these new issues by following the board's indications as to an essential feature of the invention that was missing in the previously pending sets of claims. Hence, the board exercising the discretion under Article 13(1) sentence 4 RPBA 2020, admits the appellants' main request into the appeal proceedings.

2. Compliance with Article 123(2) EPC

In comparison to the original set of claims, the sole claim of the present main request that has been substantially amended is claim 1 (see V above).

In particular, the amended portions of claim 1 result from the addition of reference numbers as present in Figures 1 and 2 (in accordance with Rule 43(7) EPC) and from the incorporation in claim 1 of features originally disclosed on/in:

- page 11, lines 6 to 7;
- original claim 3 and page 2, lines 19 to 21;
- original claim 4 and page 3, lines 13 to 14 and 16 to 17, and
- page 3, lines 1 to 3.

The board stresses that these features appear to be disclosed to the skilled reader of the application as filed as having general applicability. Moreover, they are all present in combination in the fabric stain treatment device depicted in the figures which illustrate the invention.

Hence, the board finds that the main request complies with the requirements of Article 123(2) EPC.

3. Clarity (Article 84 EPC) and novelty (Article 54 EPC)

The board is satisfied that the claims of the main request are clear and supported by the description, and that their subject-matter is not anticipated by any of the available prior art documents. It is not necessary to provide further details on these findings since no objection of lack of clarity or lack of novelty has been raised in the decision under appeal.

4. Inventive step (Article 56 EPC)

4.1 Claim 1

4.1.1 The closest prior art

It is undisputed that the device for dosing and dispensing liquid laundry detergent compositions of claim 1 of D1, e.g. as depicted in figure 1 of this citation, represents a suitable starting point for the assessment of inventive step of claim 1 under consideration. Indeed, also this device is presented in D1 (see the second sentence in page 1 of D1) as "particularly adapted to pretreat fabrics with a portion of liquid detergent", i.e. to pretreat stains on the fabric to be washed.

The board notes, in particular, that the device of D1 possesses, in addition to an opening for filling the storage chamber with the fabric treatment composition, other openings for the dispensing of the latter that are specifically designed to be "(progressively) opened when pressure is applied to said device on a surface to which the liquid detergent is applied, and said opening being substantially closed when said pressure stops" (see claim 1 of D1).

Instead, it is apparent to the board that the device defined in claim 1 of the present main request comprises, *inter alia*, a "*filling and dispensing aperture (11)*" (of the chamber for storage of the stain treatment composition, see item "*(b)*" in claim 1) which also comprises a "*pour sprout (15)*".

4.1.2 The technical problem solved

In the board's view, even when just considering this difference, it is apparent that the device of claim 1 vis-à-vis the device of D1 solves (at least) the "minimum" technical problem of providing a further device for the treatment of stains on fabrics, i.e. the technical problem of providing an alternative to the prior art.

4.1.3 Non-obviousness of the solution

It is immediately apparent to the board that the available prior art, in which no device comprises any opening possibly falling under the generic definition of "pour sprout" for dispensing the composition, let alone from the same surface of the filling aperture, and opposite the scrubbed portion on the surface of the

base (21), cannot possibly render obvious the modification of the prior art of departure required to arrive at the subject-matter of claim 1.

Indeed, neither D1 per se nor D2 (which only relates to "compressible" containers with "closing dosing devices" for the stain treatment composition, see claim 1 of D2) contain any teaching possibly suggesting that the (relatively complex) means for delivering the stain treatment compositions in the prior art of departure can be replaced by the simple addition of a "pour sprout" to the opening already present in the prior art for filling the storage chamber.

The board therefore concludes that claim 1 of the main request offers a solution (at least) to the technical problem of providing an alternative to the prior art of departure that is not rendered obvious by the available prior art. Thus, this claim complies with the requirements of Article 56 EPC.

- 4.2 Since the other claims of the main request define either preferred embodiments of the device of claim 1 (claims 2 and 3) or the process for treating fabric stains based on the use of the device of claim 1 (claims 4 and 5), their subject-matter is found to comply with the requirements of Article 56 EPC for the same reasons given above for claim 1.
5. The oral proceedings have been cancelled in consequence of the appellant's request that the auxiliary request filed with letter dated 20 April 2021 be considered as main request. In the case at issue, the decision to hold oral proceedings has been made by the board rather than requested by the appellant. For the purposes of Rule 103(4)(c) EPC, the board likens this case to the

one where a request for oral proceedings has been made by the appellant, though, as also in the case at issue conducting oral proceedings has become unnecessary by an act of the appellant, namely to file a request that overcomes the objections raised by the board. Hence, the appeal fee shall be reimbursed at 25% in an analogous application of Rule 103(4)(c) EPC.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the examining division with the order to grant a patent with claims 1 to 5 of the main request (filed as auxiliary request with letter dated 20 April 2021) and a description to be adapted thereto.

The appeal fee shall be reimbursed at 25%.

The Registrar:

The Chairman:



A. Pinna

G. Santavicca

Decision electronically authenticated