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**Datasheet for the decision  
of 14 June 2021**

**Case Number:** T 2593/19 - 3.3.01

**Application Number:** 12795439.4

**Publication Number:** 2787822

**IPC:** A01P1/00, A01N31/04, A01N31/08

**Language of the proceedings:** EN

**Title of invention:**  
MICROBICIDAL COMPOSITION

**Patent Proprietor:**  
Unilever Global IP Limited  
Unilever IP Holdings B.V.

**Headword:**  
Microbicidal composition/UNILEVER

**Relevant legal provisions:**  
EPC Art. 53(c)

**Keyword:**  
Exceptions to patentability - (no)



**Beschwerdekammern**

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**Case Number: T 2593/19 - 3.3.01**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.01**  
**of 14 June 2021**

**Appellant:** Unilever Global IP Limited  
(Patent Proprietor 1) Port Sunlight  
Wirral, CH62 AZD (GB)

**Appellant:** Unilever IP Holdings B.V.  
(Patent Proprietor 2) Weena 455  
3013 AL Rotterdam (NL)

**Representative:** van den Brom, Coenraad Richard  
Unilever N.V.  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
22 July 2019 concerning maintenance of the  
European Patent No. 2787822 in amended form.

**Composition of the Board:**

**Chairman** A. Lindner  
**Members:** M. Pregetter  
L. Bühler

## **Summary of Facts and Submissions**

- I. European patent No. 2 787 822 is based on European patent application No. 12795439.4, filed as an international application published as WO2013/083579.
- II. European patent EP 2 787 822 was opposed under Article 100(a), (b) and (c) EPC on the grounds that the claimed subject-matter contained subject-matter for which no European patent should be granted, lacked novelty and an inventive step, was not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, and extended beyond the content of the application as filed.

In the course of the opposition proceedings, the patent proprietors requested the rejection of the opposition and submitted several auxiliary requests.

The opposition division found that the subject-matter of auxiliary request 7 met the requirements of the EPC. The subject-matter of the main request (set of claims as granted) was found to be sufficiently disclosed, to have a basis in the application as filed, to be novel and to involve an inventive step. However, the subject-matter of claim 7 was excluded from patentability as a method for treatment according to Article 53(c) EPC.

Claim 7 of the patent as granted reads as follows:

"A non-therapeutic method of disinfecting a surface comprising the steps of  
a. applying a composition according to any one of the preceding claims on to the surface; and

b. removing the composition from the surface."

III. The patent proprietors appealed this decision.

The opponent had withdrawn its opposition with the letter dated 20 November 2018.

IV. Oral proceedings before the board took place on 14 June 2021.

V. The appellants (patent proprietors)' arguments, in so far as they are relevant to the present decision, are as follows.

The term "non-therapeutic" excluded therapeutic applications of the method. By introducing this term, any application of the method which was intentionally or inherently therapeutic in nature was excised from the scope of claim 7. As non-therapeutic applications existed both on surfaces such as hard surfaces that did not form part of the human body and on surfaces forming part of the human body, claim 7 has a meaningful scope left upon introduction of the disclaimer. Such a claim is to be considered allowable under Article 53(c) EPC.

VI. The appellants (patent proprietors) requested that the decision under appeal be set aside and the patent be maintained unamended (main request). Alternatively, they requested that the patent be maintained based on the claims of one of the first to eighth auxiliary requests filed with the statement of grounds of appeal.

## **Reasons for the Decision**

1. The appeal is admissible.

2. *Method of therapy*

2.1 Claim 7 of the patent as granted defines a non-therapeutic method of disinfecting a surface.

The surfaces to be disinfected include animate and inanimate surfaces, surfaces of the human or animal body and hard surfaces.

2.2 Hard (inanimate) surfaces, especially in the field of detergents and cleansing, include surfaces of materials such as steel, laminates, porcelain, tile and various plastic materials. The disinfection of such surfaces is a clearly non-therapeutic method.

2.3 For surfaces of the human or animal body, which are often animate, a more detailed look into the matter is necessary. It has to be determined whether disinfection of surfaces of the human or animal body necessarily implies a treatment by therapy in the sense of Article 53(c) EPC.

Disinfection of skin in the context of wounds in the form of disinfecting parts of the skin that surround the wound has a clear therapeutical character since it is purposefully done in order to avoid infections.

Disinfecting healthy skin, i.e. lowering the count of viable microorganisms on healthy skin, has the ultimate aim of reducing the likelihood of the spread of pathogenic microbes. However, such a spread is of

general nature and not necessarily linked to any specific therapeutic indication in the sense of a (prophylactic) treatment by therapy. It also has to be taken into account that such indications might (solely) arise in other people which do not represent a potential patient in the sense of Article 53(c) EPC. Thus, hand disinfection of a nurse in a hospital in order to protect patients from a bacterial infection does not constitute a prophylactic therapeutic treatment on their body and is therefore not excluded from patentability. Therefore, the claimed subject-matter is not generally aimed at treating the person whose skin/hands is disinfected by therapy.

Other methods of disinfection can be envisaged, but are not crucial to the present decision.

Furthermore, methods of non-therapeutic nature concerning surfaces of animals or humans encompassed in the claimed subject-matter can be easily distinguished from methods of therapeutic nature by considering the purpose of the disinfection.

2.4 In sum, the method defined in claim 7, when disregarding the disclaimer "non-therapeutic", includes a) methods that are always non-therapeutic in their nature, b) methods that may have therapeutic applications but can be separated into therapeutic and non-therapeutic applications by looking at the purpose of the application and c) methods that are always therapeutic in nature.

2.5 A disclaimer that removes any methods that are therapeutic in nature restricts the scope of the claim to non-therapeutic applications. Consequently, claim 7 of the patent in suit being restricted to non-

therapeutic methods does not contain subject-matter which falls within the exceptions to patentability defined in Article 53(c) EPC.

3. The opposition division found that none of the other grounds for opposition invoked (Article 100(a) in conjunction with Articles 54 and 56, Article 100(b) and Article 100(c)) prejudiced the maintenance of the patent. These findings have not been challenged in appeal proceedings and the board sees no reason to depart therefrom.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is maintained unamended.

The Registrar:

The Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated