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Datasheet for the decision of 22 February 2023

Case Number: T 0279/20 - 3.3.06

Application Number: 06124858.9

Publication Number: 1867708

IPC: C11D3/22, C11D3/386

Language of the proceedings: EN

Title of invention:
Detergent compositions

Patent Proprietor:
The Procter & Gamble Company

Opponents:
Dalli-Werke GmbH & Co. KG
Henkel AG & Co. KGaA

Headword:
Cellulase containing detergent composition/P & G

Relevant legal provisions:
EPC Art. 54(3), 56, 153(5)
RPBA 2020 Art. 12(2), 12(4), 12(6)
Guidelines for examination H-V, 4.1

Keyword:
Novelty (main request and auxiliary request 4) - (no) - earliest priority of the patent not extending to specific compositions disclosed in a cited document benefiting from such a priority
Inventive step (main request, auxiliary requests 1 and 4) - (no) - experimental reports not apt to prove alleged improvement at least across the entire scope of claim 1
Admissibility of a disclaimer (auxiliary requests 2 and 3) - (no) - disclaimer removes more than necessary to restore novelty
Admissibility of new auxiliary requests 5 to 15 - (no) - auxiliary requests could have been filed during opposition and are not prima facie allowable

Decisions cited:
G 0002/98, G 0001/03, G 0001/15, G 0001/16

Catchword:

Europäisches Patentamt
European Patent Office
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Beschwerdekammern

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Case Number: T 0279/20 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 22 February 2023

Appellant: (Patent Proprietor)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	Gill Jennings & Every LLP The Broadgate Tower 20 Primrose Street London EC2A 2ES (GB)
Respondent: (Opponent 1)	Dalli-Werke GmbH & Co. KG Zweifaller Strasse 120 52224 Stolberg (DE)
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Respondent: (Opponent 2)	Henkel AG & Co. KGaA Henkelstrasse 57 40589 Düsseldorf (DE)
Representative:	Henkel AG & Co. KGaA CLI Patents Z01 40191 Düsseldorf (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 22 October 2019 revoking European patent No. 1867708 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	J.-M. Schwaller
Members:	L. Li Voti
	C. Brandt

Summary of Facts and Submissions

I. The appeal of the patent proprietor is against the decision of the opposition division revoking European patent no. 1867708.

II. With its statement of grounds of appeal, the appellant filed sixteen sets of claims as main request and auxiliary requests 1 to 15, as well as a document labeled D24 (Technical Data Sheet for European Application No 06124858.9). As an auxiliary measure it requested oral proceedings.

III. With their replies opponents 1 and 2 (as from now the respondents) requested the dismissal of the appeal and oral proceedings as an auxiliary measure. Moreover, they argued that the claimed subject-matter lacked novelty and/or inventive step, and that the disclaimer in some of the requests was inadmissible. Respondent 1 also filed a document labeled D25 (Redeposition test - Weißgrad/Ry-Werte/Weißgrad LT 73/Ry-Werte LT 73).

IV. The following documents are relevant for this decision:
D2: WO 2007/144856 A2
D5: Internet disclosure "SIGMA-ALDRICH Sodium carboxymethyl cellulose, CAS number 9004-32-4"
D6: Internet disclosure "Cellulose und Cellulosederivate - Grundlagen, Wirkungen und Applikationen", T. Wüstenberg, Behr's Verlag, page 308
D12: WO 2004/053039 A2
D14: EP 0 934 997 A1
D17: Data for EP Application 06124858.9, 26 May 2009
D20: Datasheet Celluzyme 0.7T
D22: Data for EP Application 06124858.9, 10 July 2019.

V. Following the board's preliminary opinion that the claimed subject-matter appeared to lack novelty and inventive step, that the disclaimers were held inadmissible and that auxiliary requests 5 to 15 were not to be admitted into the appeal proceedings, respondent 2 announced that it was not going to take part at the oral proceedings.

The appellant submitted further arguments as to the admissibility of auxiliary requests 5 to 15 and of documents D24 and D25, and as regards inventive step. Moreover, it declared withdrawing its request for oral proceedings.

VI. In reply thereto the board decided to cancel the oral proceedings.

VII. From the written submissions of the parties, the board establishes the parties' requests as follows:

The appellant requests that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the main request, or alternatively of one of the first to fifteenth auxiliary request as filed with the statement of grounds. Furthermore, it requests that document D25 not be admitted into the appeal proceedings.

The respondents request that the appeal be dismissed and that auxiliary requests 8 to 15 and document D24 not be admitted into the appeal proceedings. Respondent 1 also requests that auxiliary requests 5 to 7 not be admitted into the proceedings.

VIII. Claim 1 according to the **main request** reads as follows:

"*1. A composition comprising a modified cellulose derivative having a molecular weight from 20 000 to 500 000 kDaltons or mixtures thereof and a cellulase enzyme characterised in that the weight ratio of the modified cellulose derivative to the active cellulase enzyme protein is from 20:1 to 10000:1 and wherein the composition does not contain 0.7 to 0.9 % by weight of the total composition, of sodium nonanoyl oxybenzene sulfonate, and does not contain 10 % by weight based of the total composition, of sodium perborate monohydrate, in which the enzyme is a bacterial alkaline enzyme exhibiting endo-beta-1,4-glucanase activity (E.C. 3.2.1.4), and wherein the enzyme is selected from the group consisting of:*

(i) the endoglucanase having the amino acid sequence of position 1 to position 773 of SEQ ID NO:1;

(ii) an endoglucanase having a sequence of at least 90%, preferably 94%, more preferably 97% and even more preferably 99%, 100% identity to the amino acid sequence of position 1 to position 773 of SEQ ID NO:1; or a fragment thereof has endo-beta-1,4-glucanase activity, when identity is determined by GAP provided in the GCG program using a GAP creation penalty of 3.0 and GAP extension penalty of 0.1;

(iii) mixtures thereof."

Claim 1 of **auxiliary request 1** differs therefrom in that the composition also comprises alkali metal silicate.

Claim 1 of **auxiliary request 2** differs from that of the main request in that it contains a proviso excluding the following compositions:

	A (wt%)	B (wt%)
Linear alkylbenzenesulfonate	7.5	7.5
C12-15 alkylethoxy (3) sulfate (AE3S)	4	4
Zeolite A	2	2
Citric Acid	2.5	3
Sodium Carbonate	23	23
Acrylic Acid/Maleic Acid Copolymer	2.6	3.8
Carboxymethylcellulose	1	0.5
Protease (84 mg active/g)	0.12	0.13
Amylase (20 mg active/g)	0.15	0.15
Amylase (Natalase®) (8.65 mg active/g)	0.15	0.15
Cellulose (Celluclean™)(15.6 mg active/g)	0.1	0.1
TAED	2.2	1.4
Percarbonate	16	14
Na salt of Ethylenediamine-N,N'-disuccinic acid, (S,S) isomer (EDDS)	0.2	0.2
Hydroxyethane diphosphonate (HEDP)	0.2	0.2
MgSO4	0.4	0.4
Perfume	0.6	0.6
Suds suppressor agglomerate	0.06	0.05
Soap	0	0
Sulfate/ Water & Miscellaneous*		

*Balance to 100% .

Claim 1 of **auxiliary request 3** differs from that of the main request in that it comprises a proviso excluding compositions comprising an amylase selected from the group consisting of:

a) an amylase having Seq. I.D. 5 recited in WO 2007/144856, said amylase having one of the following groups of mutations:

(i) M15T+H133Y+N188S+A209V;

(ii) M15T+H133Y+N188T+A209V;
(iii) H133Y+N188S+G475R; or
(iv) H133Y+N188S;
b) an amylase having Seq. I.D. 6 recited in WO 2007/144856, said amylase having one of the following groups of mutations:
(i) M15T+R23K+H133Y+N188S+A209V;
(ii) M15T+R23K+H133Y+N188T+A209V;
(iii R23K+H133Y+N188S+G475R;
(iv) R23K+H133Y+N188S;
(v) M15T+H133Y+N188S+A209V;
(vi) M15T+H133Y+N188T+A209V;
(vii) H133Y+N188S+G475R; or
(viii) H133Y+N188S, and
c) combinations thereof.

Claim 1 of **auxiliary request 4** differs from that of the main request in that the modified cellulose derivative has a molecular weight from 100 000 to 300 000 kDaltons.

Claim 1 of **auxiliary request 5, 6 and 7** differs from that of auxiliary request 4 in that it comprises the additional feature (AR 5) or the proviso of auxiliary requests 2 (AR6) or 3 (AR7).

Claim 1 of **auxiliary request 8 to 15** differs from that of the main and 1st to 7th auxiliary request, respectively, in that the modified cellulose derivative is selected from the group consisting of anionically modified cellulose.

Reasons for the Decision

1. Main request - *Novelty (Article 54 EPC)*

1.1 Claim 1 of this request concerns a composition comprising a modified cellulose derivative having a molecular weight of 20 000 to 500 000 kDaltons and a selected bacterial cellulase exhibiting endo-beta-1,4-glucanase activity at a weight ratio of the cellulose derivative to active cellulase enzyme protein of 20:1 to 10000:1, the composition having further limitations as to the content of sodium nonanoyl oxybenzene sulfonate and sodium perborate monohydrate, if present.

1.2 It is not in dispute that the compositions of examples 11 and 12 of D2 disclose a composition according to claim 1 at issue.

1.2.1 D2, however, is an international application published on 21 December 2007, i.e. after the filing date of the patent in suit (27 November 2006), but benefiting from the priority date from US 60/814,442 of 16 June 2006.

1.2.2 The patent in suit claims five different priorities, the earliest one (16 June 2006) being from EP 06115574 (the disclosure of which corresponds to that of D3). The disclosure of D2 is thus potentially state of the art under Articles 153(5) and 54(3) EPC with respect to claimed subject-matter which does not benefit from the earliest priority date.

1.2.3 For the board, it is directly apparent from D3 that the claims of the priority document do not recite a composition as claimed in the patent. And even though dependent claim 5 of D3 recites the same selected bacterial cellulase as claim 1 at issue, claim 1 of D3 does not recite any modified cellulose derivative and concerns a more generic composition comprising an alkaline bacterial enzyme exhibiting endo-beta-1,4-glucanase activity, up to 10 wt% aluminosilicate and/or

phosphate builder and having a reserve alkalinity of greater than 4, which last features are not part of claim 1 at issue. It follows that it cannot be derived therefrom that the claimed priority is valid for a composition as disclosed in D2.

1.2.4 D3 discloses however in its examples specific compositions which are to be considered as alternatives also encompassed by the subject-matter disclosed in said claims 1 and 5.

According to G 1/15 (point 6.4 of the reasons) the claimed priority date can be accorded also to alternatives specifically disclosed in the priority document in question, and thus in the present case also to compositions disclosed by the examples of D3.

1.2.5 Since examples 11 and 12 of D3 disclose compositions very similar to those of examples 11 and 12 of D2, the appellant argued that the patent would benefit from said priority date also with respect to the compositions disclosed in examples 11 and 12 of D2.

Specifically, the compositions of examples 11 and 12 of D3 differ from those disclosed in D2 in that they comprise:

- 0.1 wt% Termamyl®, instead of 0.15 wt% of an amylase as disclosed in D2 (Optisize® HT Plus being mentioned as an example thereof),
- a starch encapsulated perfume and
- a different amount of the enzyme Celluclean® (0.15 wt%, instead of 0.1 wt%).

1.2.6 The board notes that, as stated in G 1/15, the criteria for determining whether the disputed priority applies also to compositions as disclosed in D2, are those

illustrated in decision G 2/98 (notes and point 8.4 of the reasons). In this respect, the skilled person, even using common general knowledge, would not directly and unambiguously derive the different compositions of D2 from the disclosure of D3, already because the amylases used according to the teaching of D2 are different from Termamyl®, and are thus not disclosed in D3.

1.2.7 Therefore, the earliest priority date of 16 June 2006 of the patent in suit does not extend to compositions as disclosed in examples 11 and 12 of D2, which thus take away the novelty of claim 1 at issue. It follows that the main request is not allowable already for this reason.

2. Main request - *Inventive step (Article 56 EPC)*

2.1 As acknowledged in paragraphs [0002] and [0004] of the patent, the use in detergent compositions of cellulase enzymes for their known benefits of depilling, softness and colour care, and of cellulose derivatives as anti-redeposition agents, were already known.

In paragraph [0004] it is stated that the claimed combination of specific cellulose derivative and bacterial cellulase was found to provide a significant improvement in cotton stain repellency (anti-redeposition) with a consequent improvement in the appearance of the laundered fabric and also improved cleaning.

According to paragraphs [0006] and [0027] of the patent both the selected cellulase enzyme and the cellulose derivative having a specific molecular weight are relevant for the effect to be obtained.

2.2 The parties agreed that D14 represents a suitable starting point for the evaluation of inventive step, as it concerns (paragraph [0010]) a detergent composition showing improved anti-redeposition benefits and excellent cleaning performance.

2.2.1 In its example 2 D14 discloses compositions consisting of 102 g of a basis formulation with added cellulase enzyme and carboxy methyl cellulose (CMC), i.e. a modified cellulose derivative.

With respect to the weight ratio of CMC to active cellulase enzyme protein, D14 (claim 1) discloses only the weight ratio of the cellulose derivative to the cellulase activity, expressed as CMC-U per 100 g of the composition.

It is known from D20 that the enzyme Celluzyme® 0.7T used in example 2 of D14 contains 1 to 10% by weight of active protein, with the consequence that at least the composition R3 of example 2 (see tables 2a and 2b), comprising 0.5 g Carbocell® TM 500S (thus about 0.5 wt% of CMC) and 0.25 wt% of cellulase, has a weight ratio of cellulose derivative to active cellulase protein falling necessarily within the claimed range of 20:1 to 10 000:1.

This composition, which represents the closest prior art, differs from that of claim 1 at issue in that it contains a different cellulase enzyme (Celluzyme® 0.7T), and in that it does not specify the molecular weight of the CMC used, namely Carbocell® TM 500S.

2.3 D14 (paragraph [0011]) further teaches that the disclosed combination of cellulase and cellulose derivative provides improved anti-redeposition and

excellent cleaning effect. This is also shown in Tables 2a and 2b of example 2, wherein composition R3 has a significantly better performance than composition R2 comprising only added CMC and the base formulation.

Therefore, the closest prior art already provides a solution to the technical problem addressed to in the patent in suit.

2.3.1 It is to be noted that the patent in suit does not contain any evidence supporting a superiority of the claimed subject-matter over the closest prior art arising from the above distinguishing features.

In an attempt to show the superiority of the claimed combination over the prior art, the appellant relied on experimental reports D17, D22 and D24.

2.3.2 In D17, test compositions having a base formulation different from the closest prior art were tested as to their anti-redeposition properties. In particular, in example 1 it is shown that the composition comprising a combination of 10 ppm sodium CMC (Finnfix BDA grade) and 0.1 ppm Celluclean® (apparently according to claim 1 at issue even though the weight ratio of CMC to active enzyme protein is not indicated) provides either better anti-redeposition than the same composition comprising 20 ppm CMC and no cellulase (example B) or similar benefits as a composition comprising 0.25 ppm Celluclean® and no CMC (example C).

2.3.3 For the board, even accepting in the appellant's favour that the improvement shown for this single composition is tantamount to a synergistic effect arising from the combination of the specific CMC and cellulase, it cannot be derived from this report that this effect is

different from or better than the one already shown in the closest prior art D14. D17 does not show any comparison with a composition according to D14, which has a different formulation and comprises a different CMC and a different cellulase in different amounts and ratios, and wherein also the test conditions for assessing anti-redeposition were different.

D17 thus is neither apt to show that the alleged benefit (if present) is different from that already shown in D14 nor that said benefit is achieved across the entire scope of claim 1, which not only encompasses very different amounts of CMC and cellulase but also covers an extremely broad range (20:1 to 10000:1) as regards the weight ratio of cellulose derivative to active cellulase enzyme protein.

2.3.4 As to D22, this repeats the tests carried out in D17 with the indication of the standard deviation for the results obtained. The considerations as regards examples B, C and 1 of D22 are thus the same as those exposed with respect to D17.

D22 also contains two additional comparisons wherein the enzyme Celluclean® of examples C and 1 was replaced by Celluzyme® (examples D and E).

But even though a comparison of the results for examples B, D and E would appear not to provide any improvement for the combination of CMC and Celluzyme®, D22 however neither specifies the type of Celluzyme® used, nor the content in active cellulase protein. Therefore, even though this enzyme might be similar to the one used in D14, it cannot be derived from D22 that the same enzyme as the one used in the closest prior art was tested. The board remarks in this respect that

the generic statements contained in the proprietor's letter of 11 July 2019 (page 2, last paragraph) and in its statement of grounds that the tested composition is one according to D14 cannot compensate the missing information regarding the precise identity of the enzyme used.

As further exposed in D17, the overall formulation as well as the type of CMC used and the concentrations and ratios of cellulase and CMC, as well as the test conditions used in D22, are different from those applied in the closest prior art.

It follows that also this set of experiments is not suitable for showing that the alleged benefit is different from that already shown in D14 let alone exists across the entire scope of claim 1.

2.3.5 As regards the new experimental report D24 filed with the grounds of appeal as a reply to objections concerning experimental report D22 discussed for the first time during oral proceedings (as set out in detail in the decision under appeal), the board notes that the proprietor filed D22 two months before oral proceedings in reply to the division's preliminary opinion that considered D17 not suitable for showing an improvement over the closest prior art, which objection was already stated earlier by opponent 1 (see letter of 10 May 2019) wherein D17 was explicitly objected to as not providing any evidence of a synergistic effect or of an improvement across the entire scope of claim 1.

2.3.6 It is thus unclear for the board why the proprietor could not file D24, which alike D22 attempts to prove the synergy of the claimed combination, together or instead of D22.

The board further notes that the reasoned decision, by confirming (passage bridging pages 16 and 17) that also the new experimental data did not prove that the alleged technical benefit (if any) was credibly obtained across the entire scope of claim 1, does not address any new reason but explains and reiterates what had already been put forward in writing during opposition with respect to similar experiments in D17.

2.3.7 It follows that there was no justification for the filing of further experiments in appeal proceedings, bearing in mind that according to Article 12(2) RPBA 2020 a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based.

In the present case the tests in D24 concern a series of compositions comprising the same CMC used in D22 and the enzyme Celluclean® 5T according to claim 1 at issue, or an unspecified Celluzyme® enzyme, but also in D24, there is no indication of the active protein content of the enzymes used, and thus of the weight ratio of cellulose derivative to active cellulase protein, let alone of the type of Celluzyme® used. Moreover, the overall formulation as well as the type of CMC used and the concentrations and ratios of cellulase and CMC as well as the test conditions used in D24 are still different from those applied in the closest prior art.

2.3.8 Therefore D24, for the same reasons as those exposed for D22, cannot be considered prima facie apt to show the validity of the alleged technical benefit over the closest prior art, let alone across the entire scope of claim 1. Therefore, the board has decided not to admit

document D24 into the proceedings under Articles 12(4) to (6) RPBA 2020.

Hence D25, filed by respondent 1 in reply to the filing of D24, is also not admitted.

2.4 In view of the above considerations the objective technical problem has to be formulated as the provision of a further detergent composition able to provide good anti-redeposition and cleaning effect.

2.5 It has thus to be decided, starting from the above defined closest prior art, whether it was obvious:
(1) to use a cellulase as claimed instead of Celluzyme® 0.7T and
(2) to use a modified cellulose derivative having a molecular weight as claimed.

2.5.1 In this respect, the board notes that D12 (page 1, lines 2-3; page 3, lines 6-17 and claims 1 and 2) discloses cellulase enzymes in accordance with claim 1 at issue, which improve detergency performance and have an anti-redeposition effect and (D12, page 20, lines 14-15) may be used in combination with other anti-redeposition agents such as CMC.

Therefore it was manifestly obvious for the skilled person to try such a promising cellulase instead of that of example 2 of D14 in order to provide a further detergent composition able to provide good anti-redeposition and cleaning effect.

2.5.2 As regards the molecular weight of the CMC, it is not in dispute that CMCs having a molecular weight as claimed were known in the prior art. It can be for example derived from D5 and D6 that CMC, with the

exception of the high viscosity ones, have a molecular weight as claimed, which means that it would have been obvious for the skilled person to try in the composition according to D14 any suitable commercially available CMC - instead of Carbocell® TM 500S - and to expect similar benefits.

Therefore it was also obvious for the skilled person to try a CMC as claimed instead of the one used in the examples of D14 and so arrive at a composition having all the features of claim 1 at issue.

2.6 The subject-matter of claim 1 of this request thus lacks an inventive step within the meaning of Article 56 EPC.

3. Auxiliary request 1 - *Inventive step*

3.1 Claim 1 of this request differs from that of the main request in that the claimed composition comprises an alkali metal silicate.

3.2 As example 2/composition R3 of D14, representing the closest prior art, already comprises an alkali metal silicate, this additional feature does not distinguish further the claimed subject-matter from the closest prior art, so that claim 1 of this request lacks an inventive step for the same reasons as those exposed above with respect to the main request. Auxiliary request 1 is thus not allowable under Article 56 EPC.

4. Auxiliary request 2 - *Admissibility of the disclaimer*

4.1 Claim 1 of this request differs from that of the main request in that it contains a disclaimer against

examples 11 and 12 of D2, found to be novelty destroying under Articles 153(5) and 54(3) EPC.

4.2 For the board the disclaimed compositions are broader than those disclosed in said examples of D2 in the sense that they do not identify precisely some of the components (such as the linear alkyl benzene sulfonate and the carboxy methyl cellulose) in the list bridging pages 21 and 22 of D2. Moreover, the disclaimer identifies some of the enzymes by their generic trademarks without thus defining clearly the limits of the claim.

4.3 The disclaimer thus removes more than necessary to restore novelty and has not been drafted as required (see G1/16: notes and points 44, 45 and 47 of the reasons, and G1/03: point 3 of the reasons). It is thus inadmissible and auxiliary request 2 therefore not allowable already for this reason.

5. Auxiliary request 3 - *Admissibility of the disclaimer*

5.1 Claim 1 of this request differs from that of the main request in that it contains a disclaimer directed against the amylases listed in claim 1 of D2.

5.2 The board notes that this amendment is not based on the application as originally filed, and thus the Guidelines for Examination H-V, 4.1 cited by the appellant - regarding disclaimers which find a basis in the application as filed - do not apply. Moreover, this disclaimer removes necessarily more than necessary to restore novelty over D2, examples 11 and 12, so that for the same reasons as for auxiliary request 2 this disclaimer is inadmissible and auxiliary request 3 not allowable.

6. Auxiliary request 4 - *Novelty and inventive step*

6.1 Claim 1 of this request differs from that of the main request in that the modified cellulose derivative has a molecular weight of 100 000 to 300 000 kDaltons.

6.2 Since the cellulose derivative disclosed in examples 11 and 12 of D2 (Finnfix® BDA), which is the one used in all the examples of the patent, has undisputedly a molecular weight falling within the wording of claim 1 at issue, the subject-matter of claim 1 lacks novelty for the same reasons as the main request.

6.3 Moreover, as it has not been shown that the claimed range of molecular weight does not encompass the molecular weight of the CMC of the closest prior art, and since CMC having the claimed molecular weight was undisputedly commercially available, all arguments regarding inventive step already exposed with respect to the main request apply, so that the claimed subject-matter is obvious, and thus lacks inventive step.

7. Auxiliary requests 5 to 7 - A*dmissibility*

7.1 These requests being new ones, their admittance is subject to the discretionary power of the board to be exercised in view of articles 12(4) and (6) RPBA 2020.

7.2 It is noted that claim 1 of auxiliary requests 5 to 7 corresponds to the combination of the additional feature of auxiliary request 4 with each of auxiliary requests 1 to 3, respectively.

7.3 The board further notes that, even though - as stated in appellant's letter of 14 February 2023 - the features of auxiliary requests 1 to 4 had been already

discussed at first instance, the statement of grounds of appeal does not explain why these requests, which consist in a combination of features already contained individually in the higher ranking requests (but not discussed in combination) could not be filed before the opposition division together with those requests which had been filed only two months before the oral proceedings.

7.4 For the board it is also not prima facie apparent from the grounds of appeal which objections were intended to be overcome with the filing of these requests in case the higher ranking requests were found not to be allowable, and why these objections would therewith be overcome. To the contrary, as explained hereinafter, these new requests are not prima facie allowable.

7.4.1 Claim 1 of auxiliary request 5 differs from that OF auxiliary request 4 in that it requires the presence of an alkali metal silicate, which feature does not distinguish further the claimed subject-matter from the closest prior art so that, like for auxiliary request 4, this claim does not prima facie fulfill the requirements of Article 56 EPC.

7.4.2 The respective claim 1 of auxiliary requests 6 and 7, which contains the same inadmissible disclaimers as auxiliary requests 2 or 3, is thus prima facie not allowable for the same reasons.

7.5 The board has therefore decided not to admit these auxiliary requests into the appeal proceedings.

8. Auxiliary requests 8 to 15 - *Admissibility*

8.1 These requests are also new ones, and their claims 1 correspond to that of the main and 1st to 7th auxiliary requests supplemented with the preferred feature of granted claim 14.

8.2 The board notes that the statement of grounds of appeal does not explain why these requests could not have been filed before the opposition division together with the higher ranking auxiliary requests filed before the oral proceedings at first instance. The grounds of appeal only mention that they have been filed in answer to a specific aspect of the reasoning in the decision, namely the argument that there was no evidence that the alleged effect shown in D22 for one type of modified cellulose derivative (CMC) would be expected to arise across the entire scope of claim 1.

8.3 In the board's view, the proposed amendment, namely the introduction of the feature "anionically modified cellulose", contrary to what was stated in appellant's letter of 14 February 2023, cannot address this issue since the above class of modified cellulose still includes any type of CMC and thus also the one of the closest prior art.

Moreover, as exposed above with respect to the admissibility of document D24, the decision under appeal does not address any new reason but explains and reiterates what had already been put forward in writing during opposition with respect to the already cited similar experiments of D17.

It follows, also in view of the provisions of Article 12(2) RPBA 2020, that there is no justification for the filing of such auxiliary requests in the appeal proceedings.

8.4 It is also not prima facie apparent for the board from the grounds of appeal which objections are intended to be overcome with such amendments, and why these objections are overcome, because the introduction of the feature "anionically modified cellulose", which is a **generic class** of modified cellulose still **including** any type of CMC, does not distinguish further the claimed subject-matter from examples 11 or 12 of D2 or from D14, so that these requests are either prima facie not allowable for lack of novelty and/or inventive step or not admissible because of the presence of the disclaimer, for the reasons exposed above with respect to the higher ranking requests.

8.5 Therefore none of these requests are admitted into the proceedings under Articles 12(4) and (6) RPBA.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Pinna J.-M. Schwaller

Decision electronically authenticated