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**Datasheet for the decision
of 5 July 2023**

Case Number: T 0273/21 - 3.3.06

Application Number: 15179152.2

Publication Number: 3124585

IPC: C11D1/83, C11D3/30, C11D10/04,
C11D17/04, C11D1/22, C11D1/29

Language of the proceedings: EN

Title of invention:
WATER-SOLUBLE UNIT DOSE ARTICLE

Patent Proprietor:
The Procter & Gamble Company

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

Headword:
WATER-SOLUBLE UNIT DOSE ARTICLE / The Procter & Gamble Company

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - non-obvious alternative

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0273/21 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 5 July 2023

Party as of right: Dalli-Werke GmbH & Co. KG
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Appellant 2: Henkel AG & Co. KGaA
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Respondent: The Procter & Gamble Company
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 January 2021
rejecting the opposition filed against European
patent No. 3124585 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: P. Ammendola
 R. Cramer

Summary of Facts and Submissions

I. This appeal lies from the decision of the opposition division to reject the oppositions filed against European patent No. 3 124 585, claims 1 and 15 thereof reading:

"1. A water-soluble unit dose article comprising a water-soluble film and a liquid laundry detergent composition, wherein the laundry detergent composition comprises;

a. between 10% and 45% by weight of the detergent composition of a first anionic surfactant wherein the first anionic surfactant is an amine neutralised linear alkylbenzene sulphonate;

b. a second anionic surfactant wherein the second anionic surfactant is an amine neutralised alkyl sulphate;

c. optionally an amine neutralised soap;

d. a non-ionic surfactant;

e. optionally a hydrophobically-modified polymer;

f. between 0.5% and 20% by weight of the detergent composition of water; wherein

the weight ratio of the first amine neutralized anionic surfactant : the sum of the second amine neutralized anionic surfactant and the non ionic surfactant is between 1.3:1 and 3:1; and

the weight ratio of the first amine neutralized anionic surfactant : amine neutralized soap is between 1:0 and 1:0.45."

"15. A method of doing laundry comprising the steps of diluting a water-soluble unit dose article according to any preceding claims in water by a factor of at least

350 to form a wash liquor and then washing fabrics with said wash liquor."

Claims 2 to 14 define preferred embodiments of the **water-soluble unit dose** article (hereinafter **WS unit dose**) of claim 1.

II. In its decision the opposition division found that the ground for opposition under Article 100(a) EPC in combination with Article 56 EPC did not prejudice the maintenance of the patent as granted. In its reasoning it considered the closest prior art to be that disclosed in **D5** (DE 10 2012 211 028 A1) and it took into account the data in **D14** (Technical report filed by the patent proprietor on 8 October 2019) and **D19** ("Tenside in Waschmittel", Internet citation).

III. Both opponents 1 and 2 (hereinafter **appellant 1** and **2**) appealed the decision.

Appellant 2 only disputed the findings of the opposition division on inventive step in view of D5, and further referred to D14 and D19.

IV. The patent proprietor (hereinafter **respondent**) replied with letter of 12 October 2021.

V. In response to the board's preliminary opinion, appellant 1 withdrew its appeal and appellant 2 announced its absence to the forthcoming oral proceedings. The board then cancelled the oral proceedings.

VI. The parties final requests were thus the following:

Appellant 2 requests that the decision under appeal be set aside and the patent be revoked in its entirety.

The respondent requests that the appeal be rejected.

Reasons for the Decision

1. As the objections raised by appellant 1 were found unconvincing in the board's preliminary opinion and since appellant 2 did not rely on these objections, there is no need to address them in the present decision, since appellant 1 has withdrawn its appeal.

2. Patent as granted - Inventive step

It is undisputed that the patent in suit relates to a WS unit dose that aims at providing effective cleaning in particular on grease and/or grass stains during laundry.

2.1 Closest prior art

Appellant 2 did not dispute the finding of the opposition division that the liquid laundry detergent composition suitable for WS unit dose disclosed in example E1 of D5 represents the closest prior art, and only differs from the detergent composition of claim 1 as granted in that the weight ratio of the amine neutralised linear alkylbenzene sulphonate : the sum of the amine neutralised alkyl sulphate and the non-ionic surfactant is lower than 1.3:1, and the weight ratio of the amine neutralised linear alkylbenzene sulphonate : amine neutralized soap is lower than 1:0.45.

The board sees no reason to take a different stance.

2.2 Problem solved and non-obviousness of the proposed solution

2.2.1 Appellant 2 argued in essence that the patent in suit and D14 would not render plausible any benefit for the patented WS unit dose of claim 1 versus the prior art disclosed in example E1 of D5. Hence, in the absence of any other experimental comparison it would not even be justified to assume that the patented WS unit dose represented a comparable alternative to the prior art (see the sentence bridging pages 4 and 5 of their statement of grounds of appeal).

Accordingly, the sole technical problem solved by the subject-matter of claim 1 was the provision of a mere alternative to the prior art and, based on the disclosure in D5, the skilled person would be motivated to solve such technical problem by amending the disclosure of D5 so as to arrive at the scope of claim 1 under consideration.

2.2.2 The board finds in the teachings of the patent itself no reason to doubt the ability of the patented WS unit dose to provide good laundry cleaning results also on grease and grass stains.

Nor has appellant 2 pointed to teachings in D5 that could justify the conclusion that this prior art can plausibly be expected to be superior to the patented WS unit dose in such cleaning results.

In view of these facts, appellant 2's reasoning in the sentence bridging pages 4 and 5 of its statement of grounds of appeal (summarised above) appears to imply an unjustified reversal of the burden of proof.

In other words, in the absence of reasons apparent to the skilled reader of the patent in suit and/or D5 that would render plausible that the closest prior art in D5 provides better cleaning results than the patented invention, the onus to demonstrate that the subject-matter of claim 1 does not even represent a comparable alternative to the prior art remains with the appellant.

Hence, the formulation of the technical problem solved provided in reason 4.4.3 of the decision under appeal, namely to "at least provide an alternative water-soluble unit dose article that comprises a laundry detergent composition that also provides a good balance of both grease and grass stains removal", appears to be correct.

2.2.3 The solution to this technical problem offered in claim 1 of the patent in dispute is a WS unit dose comprising a liquid laundry detergent composition with all the features described in the claim, including in particular a weight ratio of the amine neutralised linear alkylbenzene sulphonate : the sum of the amine neutralised alkyl sulphate and the non-ionic surfactant between 1.3:1 and 3:1, and a weight ratio of the amine neutralised linear alkylbenzene sulphonate : amine neutralised soap between 1:0 and 1:0.45.

2.2.4 It is undisputed that in order to arrive from example E1 of D5 to the patented WS unit dose it is sufficient to increase the relative amount of the linear alkylbenzene sulphonate. However, the board finds that, even if claim 1 of D5 specifies that the detergent composition may comprise up to 35 wt.% of anionic surfactant of sulphonate type, still this teaching represents no incentive to modify the composition E1 so

as to arrive at a composition as defined in claim 1 of the opposed patent. This is because, as expressly reasoned by the opposition division in point 4.4.5 of the appealed decision, the skilled reader of D5 would also consider that "the ratio of alkyl benzene sulphonate : non-ionic surfactant is 1.16:1 in Composition E1 and the preferred ratio, according to claim 3 and paragraph [0012], is of from 0.8:1 to 1.25:1; that means that the skilled person by increasing the amount of alkyl benzene sulphonate would correspondingly increase the amount of non-ionic surfactant in order to remain within the preferred ratio limit of alkyl benzene sulphonate : nonionic surfactant of 1.25:1. By following the preferred teaching of D5, the skilled person would thus in no way arrive at a laundry detergent composition having a weight ratio of alkyl benzene sulphonate surfactant : the sum of non-ionic surfactant and alkylether sulphate anionic surfactant of at least 1.3:1. There is no reason why the skilled person would not follow the preferred embodiments of D5 for providing the best overall results." Further, the board agrees with the following argument of the opposition division: "As stated by Opponent 02, alkyl benzene sulphonate surfactants are known as very good agents for removing grease stains from fabric substrates, while they have the tendency of inhibiting the action of enzymes, such as proteases, in removing enzyme-sensitive stains, such as grass stains. Therefore, the skilled person would not increase the amount of alkyl benzene sulphonate solely in the Composition E1 in an attempt of maintaining a good balance of both grease and grass stains removal. By doing that, he will attend an increase of the grease removal performance, but also a decrease of the grass removal performance, leading thus

to a deterioration of the balance of both grease and grass stains removal."

It follows that the skilled reader of claim 1 of D5 would have two reasons for not increasing the relative amount of alkyl benzene sulphonate surfactant in the composition E1 (i.e. for not carrying the modification in Example E1 of D5 required for arriving at the composition of present claim 1), namely because it would i) rather increase the amount of non-ionic surfactant and ii) expect that such modification would result in a worsening of the grease stains removal.

2.2.5 The board further observes that the common general knowledge reflected in D19 (referred to by appellant 2 on page 6 of its grounds of appeal) as well as the other considerations on pages 5 to 7 thereof represent no motivation for the skilled reader of D5 to refrain from the reasoning given in the above-cited passages of reason 4.4.5 of the opposition division. Thus, this common general knowledge does not render apparent to the skilled reader of D5 that the modification of this prior art required to arrive at the subject-matter of claim 1 represents one of the possibilities to obtain a further WS unit dose also providing good cleaning results on grease and grass stains.

Hence, even by completely disregarding the data in D14 (that appellant 2 in the first paragraph of page 8 of its statement of grounds of appeal describes as unsuitable for the assessment of a technical effect of the patent in suit), the board sees no reason to reverse the conclusion of the opposition division that the subject-matter of granted claim 1 does not represent a solution to the problem of providing an

alternative to the prior art that would be obvious in view of D5 itself.

- 2.3 The board concludes that the submissions of appellant 2 are insufficient at concluding that the subject-matter of claim 1 of the opposed patent is obvious in view of the prior art disclosed in D5.
3. Of course the reasons given above also apply to the preferred embodiments of the WS unit dose of claim 1 described in claims 2 to 14 of the opposed patent, as well as to the laundry method using such unit dose described in claim 15 of the opposed patent (see I above).
4. The board concludes that appellant 2 failed to prove the incorrectness of the conclusion of the opposition division that the ground for opposition under Article 100(a) EPC in combination with Article 56 EPC (lack of inventive step) does not prejudice the maintenance of the patent as granted.
5. The oral proceedings have been cancelled in consequence of the appellant 2's withdrawal, with letter of 4 May 2023, of the previously filed request for oral proceedings. Hence, the appeal fee is reimbursed at 25% in application of Rule 103(4)(c) EPC.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The appeal fee paid by appellant 2 is reimbursed at 25%.

The Registrar:

The Chairman:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated