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**Datasheet for the decision
of 17 January 2023**

Case Number: T 1527/21 - 3.2.07

Application Number: 15165258.3

Publication Number: 2944578

IPC: B65B53/06, B65D65/46,
C11D17/04, B65B53/00

Language of the proceedings: EN

Title of invention:

PROCESS FOR THE PREPARATION OF A PACKAGE CONTAINING COMPACTED
COMPOSITION

Patent Proprietor:

Reckitt Benckiser Finish B.V.

Opponent:

Henkel AG & Co. KGaA

Headword:

Relevant legal provisions:

EPC Art. 100(c), 76(1), 100(a), 56

Keyword:

Grounds for opposition - subject-matter extends beyond content
of earlier application (no) - lack of patentability (no)
Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1527/21 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 17 January 2023

Appellant: Henkel AG & Co. KGaA
(Opponent) Henkelstrasse 67
40589 Düsseldorf (DE)

Representative: Henkel AG & Co. KGaA
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Respondent: Reckitt Benckiser Finish B.V.
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Representative: Hewett, Erica Louise
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 20 July 2021
rejecting the opposition filed against European
patent No. 2944578 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Cano Palmero
A. Pieracci

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal within the prescribed period and in the prescribed form against the decision of the opposition division rejecting the opposition against European patent No. 2 944 578.
- II. The opposition was directed against the patent in its entirety and based on the ground for opposition pursuant to Articles 100(a) and (c) EPC (lack of inventive step and extension of subject-matter).
- III. In preparation for oral proceedings, the Board communicated its preliminary assessment of the case by means of a communication pursuant to Article 15(1) RPBA 2020 that the appeal was likely to be dismissed.
- IV. The appellant responded by letter of 12 September 2022.
- V. Oral proceedings before the Board took place on 17 January 2023. At the conclusion of the proceedings the decision was announced. Further details of the proceedings can be found in the minutes thereof.
- VI. The final requests of the parties are as follows,

for the appellant:

that the decision be set aside and
that the patent be revoked in its entirety,

for the respondent (patent proprietor):

that the appeal be dismissed, *i.e.* that the patent be maintained as granted;

or, in the alternative,
when setting aside the decision under appeal,
that the patent be maintained in amended form
according to one of the sets of claims filed as
auxiliary requests 1 to 5 with the reply to the
statement of grounds of appeal.

VII. The lines of argument of the parties relevant for the present decision with regard to the patent as granted are dealt with in detail in the reasons for the decision and are focused on the review of the findings of the opposition division on the grounds of opposition under Articles 100(c) and 76(1) EPC and under Articles 100(a) and 56 EPC.

VIII. The following **evidence** has been filed during the opposition proceedings and re-filed by the appellant with its statement of grounds of appeal:

- D1:** WO 2006/095190 A2 (parent application of the patent in suit);
- D2:** GB 2 401 091 A;
- D3:** EP 1 364 610 A1;
- D4:** DE 102 54 313 A1;
- D5:** EP 0 888 448 B1;
- D6:** "Verpackung mit Kunststoffen";
- D7:** "The Wiley Encyclopaedia of Packaging technology";
- D8:** WO 00/01592 A1.

IX. Independent **claim 1** according to the **patent as granted** reads as follows:

"A process comprising:

- a) forming a compressed particulate tablet by a method comprising compacting a particulate

automatic dishwashing composition at a compaction pressure in the range 150 - 350 kg/cm²;
b) flow wrapping a product consisting of the tablet with a water soluble film comprising polyvinyl alcohol; and
c) heat treating the wrapped tablet to shrink the film such that it clings to said composition, wherein the film has at least one aperture to allow the release of any trapped air during the heat treating of the wrapped tablet, and wherein the heat treating of the wrapped tablet is carried out using a flow of air at elevated temperature, wherein the air is heated to a temperature of between 180 to 650°C."

X. As the auxiliary requests do not form part of this decision, it is not necessary to reproduce them here.

Reasons for the Decision

1. *Patent as granted - Added subject-matter, Articles 100(c) and 76(1) EPC*

1.1 The appellant argued that claim 1 according to the patent as granted extends beyond the content of the earlier application as originally filed (**D1**), so that the requirements of Article 76(1) EPC are not met.

1.1.1 In particular, the appellant pointed out that while claim 1 of the earlier application was directed to prepare a package containing a general compacted particulate composition, claim 1 according to the patent as granted was restricted to packaging a particulate product which

(i) is a dishwashing composition; **and**

(ii) consists exclusively of a single tablet.

1.1.2 However, the earlier application presents in multiple passages feature (i) as an equivalent alternative to other products such as fabric care or surface care (cf. page 3, two last paragraphs, page 11, last paragraph, page 15, first paragraph, and page 17, first paragraph, of the description of the earlier application), and feature (ii) as an equivalent alternative to other possible different structures such as multiple tablets or a combination of tablets with other non-tablet bodies (c.f. last complete paragraph of page 13 and the bridging paragraphs of pages 13 to 14 and 14 to 15 of the earlier application).

1.1.3 In addition, the example described in the last paragraph on page 28 of the earlier application cannot serve as a basis for the combination of features (i) and (ii), since this omission in the claim of the rest of the features pertaining to that example would result in an unallowable intermediate generalisation.

1.1.4 In summary, according to the appellant, the packaging of a product with the combination of features (i) and (ii) is not directly and unambiguously disclosed in the earlier application.

1.2 The Board is not persuaded by the arguments of the appellant and rather concurs with the findings of the opposition division of point II.12.2 of the decision under appeal that these two features (i) and (ii) have not been selected from two lists of some length of equivalent alternatives as is required for an unallowable multiple selection (see Case Law of the Boards of Appeal [CLB], 10th edition 2022, II.E.1.6.2 and I.C.6.2.1.b), for the following reasons.

- 1.2.1 As correctly indicated by the respondent *inter alia* in page 3 of its reply to the statement of grounds of appeal, the earlier application shows that automatic dishwashing composition is a preferred embodiment of the claimed process as granted in claim 1 (c.f. page 23, lines 12 to 16 and lines 18 to 20). Since the preferred embodiment of the invention is directed to automatic dishwashing compositions, it cannot be agreed with the appellant that this feature (i) has been extracted from a list of equivalents. This preference over the rest of alternatives also applies to feature (ii), since page 13, lines 24 to 25, discloses that the compacted composition is "most desirably in the form of a tablet".
- 1.2.2 Finally, the Board also agrees with the respondent (see first paragraph of page 5 of the reply to the statement of grounds of appeal), that the experimental part of **D1** from page 28, line 26 to page 30, line 29, which is completely based on experiments using "a compressed particulate dishwashing tablet", shows a clear and unambiguous indication in the earlier application of an embodiment confirming the particular combination of the preferred features (i) and (ii).
- 1.3 In consequence, the Board is not persuaded by the arguments of the appellant that opposition division was incorrect in its finding that the ground for opposition under Article 100(c) EPC does not prejudice the maintenance of the patent as granted.

2. *Patent as granted - Inventive step, Articles 100(a) and 56 EPC*

2.1 The appellant argued (see first paragraph of page 12 of the statement of grounds of appeal) that claim 1 as granted lacks an inventive step over a combination of document **D2** with the other cited prior art documents **D3 to D8**, whereas **D8** has been also relied upon for the interpretation of claim 1 of the patent in suit.

2.1.1 In the appellant's view, the subject-matter of claim of claim 1 as granted differs from the known process of **D2** in that

- a) the use of a heat-shrink wrapping process, and
- b) the use of a flow of air heated to a temperature of between 180 to 650°C.

2.1.2 In particular, the appellant contested the finding of the opposition division of point II.13.1.2 of the decision under appeal that, since the process of **D2** is directed to the use of **two films**, claim 1 also differed in that the tablet is flow wrapped using a **single film**. According to the appellant, the scope of claim 1 as granted would not be limited to a single film, but has to be understood to include also processes wherein two films are applied in the wrapping process.

2.1.3 Such an interpretation of the subject-matter of claim 1 is on the one hand linguistically coherent since the claim discloses "a" water soluble film, leaving the possibility open to the use of at least two films. On the other hand, this interpretation is not at odds with the general technical knowledge that a flow wrapping of the product according to step b) of claim 1 can be carried out using one or two films as depicted by **D8**, figures 4 and 5.

- 2.2 The Board does not share the claim interpretation made by the appellant and rather concurs with the opposition division and the respondent, that claim 1 according to the patent as granted can be only understood in the sense that **exactly one film** is applied.
- 2.2.1 The Board agrees with the respondent that the wording in the claim not only foresees in step b) that "a" water soluble film is applied, but also that "the" film has at least one aperture. This combination of the terms "a" and "the" leaves the skilled reader no other possible interpretation that only one film is meant. This clear interpretation of the subject-matter of claim 1 as granted makes in addition technical sense and is devoid of any technical incorrectness or inaccuracies, so that the description cannot be used to interpret the claim in any other way (see CLB, *supra*, II.A.6.3.1).
- 2.2.2 The Board however notes that even in the case that the wording of the claim could be considered somehow ambiguous and give rise to doubts as whether one or more films were to be used, the skilled reader would then confirm the most obvious interpretation that only one single film is used by the description passages given by the respondent on page 7 of the reply to the statement of grounds of appeal (see CLB, *supra*, II.A.6.3.3).
- 2.2.3 Finally, the Board is of the view that fact that **D8** could show that the flow wrapping process according to the claim could be carried out using two films and that this feature could be interpreted otherwise is irrelevant in terms of determining the subject-matter for which protection sought by the patent in suit.

- 2.3 The appellant further argued that, even in the case that the subject-matter of claim 1 as granted could be only be interpreted in the sense that one single film is used, the objection on inventive step based on **D2** as closest prior art would still be valid, since the teaching of this document read as whole leaves open the possibility of using one single film as well, see page 3, line 14 ("the" film) and line 32 ("a" film) as well as page 10, line 1 of D2.
- 2.3.1 The Board disagrees with the appellant's view and rather concurs with the opposition division and with the respondent that the use of two films is at the core of the wrapping process of **D2**. Not only the use of two films is part of the independent claim of this document, but also the description presents this feature as essential in at least page 2, line 29 to page 3 line 9.
- 2.3.2 Thus, the skilled person starting from **D2** as closest prior art could only arrive at the subject-matter of claim 1 as granted by removing an essential feature of **D2**, namely the necessity of two distinct films. A deviation from such a fundamental use of at least two films does not seem to be justified by any of the teachings of documents **D3 to D7**.
- 2.4 Consequently, the Board is not persuaded by the appellant's arguments that the subject-matter of claim 1 according to the patent as granted lacks inventive step in view of **D2** as closest prior art in view of the teachings of any of documents **D3 to D8**.

2.5 In this light, the question of admittance into the proceedings of the line of argument based on document **D8** does not need to be addressed.

3. *Conclusions*

3.1 In view of points 1.3 and 2.4 above, the Board concludes that the appellant has not convincingly demonstrated the incorrectness of the decision under appeal in its findings that none of the grounds of opposition pursuant to Article 100(c) EPC and to Article 100(a) EPC in combination with Article 56 EPC prejudice the maintenance of the patent as granted.

3.2 As a result, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated