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**Datasheet for the decision  
of 18 March 2025**

**Case Number:** T 1816/22 - 3.3.06

**Application Number:** 16812770.2

**Publication Number:** 3405558

**IPC:** C11D3/22, C11D3/37, C11D3/50,  
D06M13/00, D06M13/127,  
D06M15/11

**Language of the proceedings:** EN

**Title of invention:**  
LAUNDRY PRODUCT

**Patent Proprietors:**  
1.Unilever IP Holdings B.V.  
2.Unilever Global IP Limited

**Opponent:**  
THE PROCTER & GAMBLE COMPANY

**Headword:**  
LAUNDRY PRODUCT/Unilever

**Relevant legal provisions:**  
EPC Art. 54, 56

**Keyword:**

Novelty - (yes) - objection based on a vague reference to the disclosure in another document

Inventive step - (yes) - unexpected improvement shown

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1816/22 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 18 March 2025**

**Appellant:** THE PROCTER & GAMBLE COMPANY  
(Opponent) One Procter & Gamble Plaza  
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**Representative:** Russell, Tim  
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**Respondents:** Unilever IP Holdings B.V.  
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(Patent Proprietor 2) Unilever Global IP Limited  
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**Representative:** Corsten, Michael Allan  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 2 June 2022  
rejecting the opposition filed against European  
patent No. 3405558 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman**            J.-M. Schwaller  
**Members:**            P. Ammendola  
                             O. Loizou

## Summary of Facts and Submissions

- I. The opponent appealed the decision of the opposition division to reject the opposition against European patent no. 3 405 558, claim 1 thereof reading:
- "1. A laundry product comprising: 50 to 95 wt. % polyethylene glycol, having a molecular weight of 2 000 to 30 000 and free oil perfume comprising phenolic aldehyde, characterised in that the composition further comprises at least 1 wt. % of starch."*
- II. The opposition division had concluded that the grounds for opposition under Article 100(a) EPC in combination with Articles 54 and 56 EPC did not prejudice the maintenance of the patent as granted, because the subject-matter of granted claim 1 was neither anticipated by the prior art disclosed in D1 (WO 2016/99852 A1), including a reference to D2 (US 7,186,680 B2), nor rendered obvious by the prior art disclosed in D3 (WO 2011/056938) in combination with the disclosure in D2 to which D3 referred.
- III. In the statement of grounds of appeal, the appellant disputed these findings.
- IV. With their reply, the patent proprietors (hereafter respondents) filed 3 sets of amended claims as auxiliary requests 1 to 3.
- V. In a communication pursuant to Article 15(1) RPBA dated 16 January 2025, the board expressed its preliminary opinion on some of the issues to be debated at the then forthcoming oral proceedings.

VI. At the oral proceedings - held on 18 March 2025 - the respondents confirmed that starch derivatives do not fall under the claimed subject-matter. The parties' final requests were the following:

The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondents requested that the appeal be dismissed (main request) or, as an auxiliary measure, that the patent be maintained in amended form based on any of auxiliary requests 1 to 3 filed with the reply to appeal.

## **Reasons for the Decision**

*Main request (patent as granted)*

1. Novelty (Articles 100(a) and 54 EPC)
  - 1.1 The appellant's objection of lack of novelty of claim 1 as granted was based on the disclosure provided in D1, in particular claim 8 (which depends on claim 1) and the sentence on page 6, lines 25 and 26, which referred to D2 by stating: "*Perfumes are generally described in U.S. Patent No. 7,186,680 at column 10, line 56, to column 25, line 22*" (hereinafter this sentence is indicated as the reference to D2).

In the opinion of the appellant, this sentence would disclose all the perfumes mentioned in the portions of this document that were specifically identified above, thus also "*ethyl vanillin*", listed for example at the top of the table in column 13 of D2, which was also present in both of the only two fully formulated examples "*Enduring Perfume A*" and "*Enduring Perfume B*"

disclosed in columns 20 and 21 of D2. Accordingly, a single selection – if any – among the perfumes implicitly disclosed in D1 (through its reference to D2) would be sufficient to arrive at the laundry product of claim 1 of the opposed patent.

1.2 For the board, the reference to D2 is so vague that it cannot be equated to a (albeit implicit, but nevertheless) direct and unambiguous disclosure that the "*perfume*" components of the prior art fabric treatment composition described in D1 can be any one of the specific perfumes disclosed in the cited portion of D2.

1.2.1 Indeed, already upon reading the wording "*generally described*" in the reference to D2 *per se*, a skilled person might expect that such a reference pertains exclusively to the general definitions of groups/ classes of perfumes (e.g., in terms of their chemical classes, origin, type of scent, or other properties) possibly provided in D2.

1.2.2 This at least seemingly possible – if not more probable – interpretation of the reference to D2 made in D1 appears also consistent with the actual disclosure in the specific portions of D2 identified in D1. Indeed, the disclosure from "*column 10, line 56, to column 25, line 22*" of D2 – besides encompassing a plethora of individual perfumes (such as those listed in the table spanning from the bottom of column 12 to column 17) and the two specific mixtures of multiple perfumes ('Enduring Perfume A' and 'Enduring Perfume B', columns 20 and 21 of D2) – also provides several general definitions of groups or classes of perfumes. For instance, reference can be made to:

- the qualitative classification of fragrances in general (see e.g. column 11: "*woody/hearty base*"s, "*light floral fragrance*"s, "*fruity odors*", "*designer fragrances*");
- the (subsequent) listing of several different perfume classes, which are defined based on their general chemical structure and molecular weight range (see from the bottom of column 11 to the bottom of column 12: "*aromatic and aliphatic esters having molecular weights from about 130 to about 250*", "*aliphatic and aromatic alcohols having molecular weights from about 90 to about 240*", "*aliphatic ketones having molecular weights from about 150 to about 260*", etc.), and
- the further descriptions in D2 of perfumes in general labelled as the groups/classes of "*enduring*" perfumes (see from column 17 to 19), of the perfumes "*with a low odour detection threshold*" (see the lower half of column 20 and column 21), and of the "*pro-fragrances*"/"*pro-accords*" (see columns 21 to 25).

Thus, even when considering the entire portion of D2 identified in D1 (from column 10, line 56 to column 25, line 22), the board finds the reference to D2 too vague, as it remains at least possible that the intention was to refer only to the groups or classes of perfumes described in general.

- 1.3 Hence, since the reference to D2 does not render part of the direct and unambiguous disclosure of the prior art in D1 the possible use of any specific perfumes disclosed in D2 (including the "*ethyl vanillin*" cited by the appellant), the subject-matter of claim 1 is not anticipated in D1.

1.4 Accordingly, the appellant's submissions do not warrant overturning the opposition division's conclusion that the ground for opposition under Article 100(a) EPC, in conjunction with Article 54 EPC, does not prejudice the maintenance of the patent as granted.

1.5 The board considers it appropriate to additionally mention that to combine the embodiment of the prior art disclosed in claim 8 of D1 with the reference to D2 in the same document, also appears to imply a further selection as to whether the perfume is free or encapsulated. Indeed, as also apparent from claim 7, both these options for the perfume component are equally suggested throughout D1, and also the reference to D2 in D1 is immediately preceded by the sentence (on lines 24 and 24 of page 6 of D1 reading: "*The particles of the fabric treatment composition of the present invention may comprise an unencapsulated perfume and/or perfume microcapsules*") also recalling both options.

Thus, at least two selections within the disclosure provided in D1 would in any case be required to arrive to the subject-matter of granted claim 1, namely that of choosing the embodiment defined in claim 8 of D1 (namely the having the perfume "*unencapsulated*", rather than "*encapsulated*" as defined in claim 7) and that of choosing "*ethyl vanillin*" among the perfumes disclosed in D2.

2. Inventive step (Articles 100(a) and 56 EPC)

2.1 It is undisputed that the prior art disclosed in claim 1 of D3 represents a suitable starting point for the assessment of inventive step for the subject-matter of claim 1 at issue, and that the latter differs from the

former at least for the presence of starch and of the specific (phenolic aldehyde) perfume.

2.2 In the grounds of appeal, the objection of lack of inventive step was also based on the assumption that the term "*starch*" in claim 1 at issue could encompass the "*starch derivatives*" described in paragraph [0027] of the opposed patent. However, at the oral proceedings held before the board, after that the respondents confirmed that the "*starch derivatives*" do not fall under the claimed subject-matter, the appellant provided no counter-argument to the reasons given in the board's communication (dated 16 January 2025), namely that paragraph [0027] provides general information on exclusively "*starch derivatives*", i.e. information that is manifestly unrelated to the patented invention; and thus, the opposition division was correct in concluding that "the wording of opposed claim 1 is clear and that para 0027 is a general description that is not conflicting with the wording of the opposed claim" (see reason 4.1.14 of the appealed decision). Thus, not further reasons need to be given to disregard the appellant's submission based on the erroneous construction of the term "*starch*" in claim 1.

2.3 The relevant arguments of the appellant are therefore in substance that, as explained on page 3 of D3, the perfume ingredient in the prior art of departure could also be accompanied by the presence of a perfume carrier material. Hence, and since "*starch*" was also known as perfume carrier material, in the absence of experimental evidence proving a technical advantage of the patented laundry product in comparison to similar laundry products encompassed by the disclosure of D3 and only differing in that they contained another perfume and/or another perfume carrier material, the

patented laundry product could only be considered to represent a mere alternative to the compositions disclosed in D3.

Since D3 also referred to the perfumes and the perfume carriers disclosed in D2 - which included ethyl vanillin among the perfumes and starch among the perfume carrier materials - the alternative to the prior art offered by the subject-matter of claim 1 at issue would be obvious in view of the combination of D3 with D2.

- 2.4 The board finds this line of reasoning manifestly unconvincing because it disregards the aim of the invention that, as stressed by the respondents, the patent in suit explicitly describes in paragraph [0008] by stating that : "*... we found that when certain perfume types are incorporated as free perfume into a PEG based scent additive they cause discoloration to form on storage. The perfume components that we have found give rise to this problem are the phenolic (aromatic) aldehydes, in particular: vanillin and ethylvanillin. There remains a need to reduce discolouration of PEG based scent additives*".

The board sees no self-evident reason to doubt the particularly severe discoloration occurring in the presence of phenolic aldehyde perfumes. Moreover, a particularly severe discoloration in the presence of phenolic aldehyde perfumes is at least consistent with the substantial differences in discoloration reported in Table 1 of the opposed patent between comparative examples A and B (the former containing only polyethylene glycol and starch, and the latter containing only polyethylene glycol and vanillin perfume).

The board further notes the undisputable fact that the values reported for the three invention examples (1 to 3) in the same table of the opposed patent show, when compared to those of comparative examples A and B, a surprisingly low level of discoloration.

Hence, in the absence of any evidence to the contrary, the board sees no reason to doubt that the subject matter of claim 1 at issue solves the technical problem identified in the patent in suit, as also acknowledged by the opposition division in point 4.1.2 of the decision under appeal.

- 2.4.1 The board stresses that, as convincingly argued by the respondents, if the appellant intended to dispute that such a particularly severe discoloration problem associated with the use of phenolic aldehyde perfumes would not exist, then it should have provided either experimental evidence or at least a sound theoretical reasoning supporting such argument.

Similarly, if the appellant intended to allege that about the same (low) discoloration achieved by the invention examples could also occur whenever using in combination any other perfume and perfume carrier material in accordance with the teachings of D3, then the onus to provide either experimental evidence or at least a sound theoretical reasoning supporting such allegation also remained with the appellant.

In other words, the mere fact that D3 discloses the possible combined use of perfume and perfume carrier material, neither necessarily implies nor at least renders it plausible that in general in this prior art the level of discoloration upon storage should be

expected to be the same observed for the laundry product of the opposed patent.

- 2.5 Accordingly, the appellant has failed to provide convincing reasons for considering that the technical problem addressed in the patent would not be solved (and thus should be reformulated as the less ambitious one of providing an alternative to the prior art).
- 2.6 Hence, and since neither D3 nor D2 even just mention the technical problem of discoloration, the board considers that the cited prior art cannot render obvious the solution to the posed technical problem offered in claim 1 at issue.
- 2.7 Therefore, the appellant's submissions also do not justify overturning the opposition division's conclusion that the ground for opposition under Article 100(a) EPC, in conjunction with Article 56 EPC, does not prejudice the maintenance of the patent as granted.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



A. Wille

J.-M. Schwaller

Decision electronically authenticated