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**Datasheet for the decision  
of 9 September 2025**

**Case Number:** T 0108/23 - 3.3.06

**Application Number:** 13783322.4

**Publication Number:** 3060640

**IPC:** C11D3/16, C11D3/39

**Language of the proceedings:** EN

**Title of invention:**

METHODS FOR REMOVING SOILS FROM SURFACES

**Patent Proprietor:**

Ecolab USA Inc.

**Opponent:**

Henkel AG & Co. KGaA

**Headword:**

Ecolab/Dishwashing

**Relevant legal provisions:**

EPC Art. 123(2), 84

**Keyword:**

Amendments - allowable (no) - deletion of features (yes) -  
Auxiliary request - allowable (yes)  
Claims - support in the description (yes)

**Decisions cited:**

**Catchword:**



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

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Case Number: T 0108/23 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 9 September 2025**

**Appellant:** Henkel AG & Co. KGaA  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 November  
2022 rejecting the opposition filed against  
European patent No. 3060640 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** S. Arrojo  
O. Loizou

## Summary of Facts and Submissions

- I. The Opponent filed an appeal against the decision of the opposition division to reject the opposition against European patent No. 3 060 640, arguing that the claims as granted extended beyond the content of the application as filed, were not novel over any one of D1 to D8 and not inventive when starting from D1 or D2 as the closest prior art.
- II. In the reply dated 6 July 2023, the Proprietor and Respondent requested that the appeal be dismissed and the patent be maintained as granted (main request). It also filed two amended sets of claims as auxiliary requests 1 and 2.
- III. Claim 1 as granted (**main request**) reads as follows:
- "1. A method for removing soil from a surface to be cleaned, wherein the method is performed in a dish washer, and wherein the method comprises the steps of:*
- a) providing one or more soiled ware, particularly soiled dishes, in a dish washer;*
  - b) contacting the one or more soiled ware in contact with an aqueous cleaning composition, wherein the cleaning composition contains both a detergent with a peroxidation catalyst and a rinse aid with an oxygen source, wherein the detergent is a detergent mixture; and*
  - c) contacting the one or more soiled ware with the rinse aid, while the ware is covered with the cleaning composition."*

Claim 1 according to **auxiliary request 1** corresponds to that of the main request with the following amendments (highlighted by the Board):

"... b) performing a first washing step comprising bringing ~~contacting~~ the one or more soiled ware in contact with an aqueous cleaning composition, wherein the cleaning composition contains both a detergent with a peroxidation catalyst and a rinse aid with an oxygen source, wherein the detergent is a detergent mixture; and  
c) performing a rinse step contacting the one or more soiled ware with the unused rinse aid, while the ware is covered with the cleaning composition."

Claim 1 according to **auxiliary request 2** corresponds to that of the main request with the following amendments (highlighted by the Board):

"... b) performing a first washing step comprising bringing ~~contacting~~ the one or more soiled ware in contact with an aqueous cleaning composition, wherein the cleaning composition contains both a detergent with a peroxidation catalyst and a rinse aid with an oxygen source, wherein the detergent is a detergent mixture; and  
c) performing a rinse step in which unused rinse aid solution with an oxygen source is brought in contact with the one or more soiled ware, wherein ~~contacting the one or more soiled ware with the rinse aid,~~ while the ware is covered with the cleaning composition."

IV. In its preliminary opinion, the Board concluded that the main and first auxiliary requests infringed Article 123(2) EPC and that the claims of auxiliary request 2 appeared to meet the requirements of the EPC.

- V. In a submission dated 16 January 2025, the Proprietor filed additional arguments.
- VI. At the oral proceedings, which took place on 9 September 2025, the parties confirmed that the decision should be based on the following requests:

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

The respondent requested that the appeal be dismissed (main request) or, as an auxiliary measure, that the patent be maintained in amended form on the basis of one of first and second auxiliary requests filed as annexes to the reply.

### **Reasons for the Decision**

1. Interpretation of claim 1 as granted
- 1.1 The Opposition Division and the Proprietor argued that it was clear from the structure of the claim that steps b) and c) were separate independent steps, and that consequently, step c) had to take place after step b). The wording of step c) (i.e. "*contacting the soiled ware with the rinse aid, while the ware is covered with the cleaning composition*") would exclude the presence of other substances in the wash water such as detergent and would therefore imply that the rinse aid did not correspond to that in step b) (i.e. that it was "unused" or freshly added rinse aid). In view of this interpretation, it would be redundant and unnecessary to use the original wording of the application as filed (in claim 12 as filed or page 36 of the description as filed), i.e. to refer to steps b) and c) respectively as steps of "performing a first washing step" and

"performing a rinse step", or to indicate that the rinse aid in step c) is "unused rinse aid".

1.2 The Board disagrees with the above interpretation because there is no basis for equating the structuring of the claim at issue in terms of steps a), b) and c) with the explicit definition in the application as filed of a "washing step" and a "rinse step". The mere definition of distinct steps does not in itself imply that these are sequentially ordered, still less that they cannot at least partially overlap in time. This is particularly relevant in the technical context of dishwashing processes, where the terms "washing cycle" and "rinse cycle" in the original application are conventionally understood to impose certain limitations, namely that the rinse cycle commences only once the washing cycle has been completed.

1.2.1 By contrast, the present wording of claim 1, and in particular the omission of the terms "washing step" and "rinse step", encompasses embodiments in which step c) is carried out simultaneously with, or at least partially overlaps with, the washing cycle. For example, the initial spraying of wash water containing the cleaning composition onto the dishware during the washing cycle could be regarded as step b), whereas the subsequent recirculation of the wash water, already comprising both the detergent and the rinse aid, through the spraying devices onto the dishware (already in contact with the cleaning composition) could be regarded as step c).

1.2.2 Furthermore, it is not apparent why the wording of step c) should be understood as implying that the dishware is contacted exclusively with rinse aid and that no detergent is present in the water. In the Board's view,

the recirculation and spraying of wash water containing both detergent and rinse aid onto the dishware clearly fulfils the requirement of step c), namely that the soiled dishware already covered with the cleaning composition is contacted with the rinse aid. Nothing in the wording of step c) suggests that the presence of detergent or any other substance is excluded. By way of analogy, the reference in step b) to the dishware being contacted with the cleaning composition likewise does not exclude the presence of additional substances conventionally present in the wash water, such as dishwasher salt.

1.2.3 The Board also does not consider that the wording of step c) implies that the rinse aid must be unused or fresh, rather than the same rinse aid as employed in step b). On the contrary, the reference to "the rinse aid" (as opposed to "a rinse aid" or simply "rinse aid") rather suggests that the rinse aid in step c) is identical to that already defined (and introduced) in step b).

2. Main request - Article 123(2) EPC

2.1 The Opposition Division and the Proprietor argued that the main request fulfilled the requirements of Article 123(2) EPC because the structure and wording of claim 1 as granted – specifically the separation into steps b) and c) – implicitly required that these steps were performed consecutively, with step c) (the rinse step) taking place after step b) (the washing step). They maintained that, although the explicit terms "performing a first washing step" and "performing a rinse step in which unused rinse aid solution..." were omitted, these features were nevertheless implicit in the claim's structure and meaning. Furthermore, the

reference to "contacting the soiled ware with the rinse aid, while the ware is covered with the cleaning composition" in step c) excluded the presence of other substances and ensured the correct sequence of operations, thereby aligning the claim with the disclosure of claims 10 to 12 and claim 1 as originally filed. It followed that the rinse aid added in step c) was not the rinse aid of the cleaning composition added in step b), so it necessarily had to be "unused rinse aid", making the term "unused" redundant. As a result, the claim did not extend beyond the content of the application as filed and thus met the requirements of Article 123(2) EPC.

2.2 For the Board, in view of its interpretation of claim 1 as granted given above, the arguments advanced by the Opposition Division and the Proprietor cannot be accepted, because the omission or rewording of the features "performing a first washing step", "performing a rinse step", and "unused rinse aid solution", originally disclosed on page 36 and in claim 12 as filed, constitutes an unallowable generalisation of the information contained in the application as originally filed, so that the subject-matter of claim 1 according to the main request extends beyond the content of the application as filed and thus infringes Article 123(2) EPC.

3. Auxiliary request 1 - Article 123(2) EPC

3.1 The subject-matter of claim 1 of this request incorporates some of the above cited features but still omits part of the information contained in the application as filed. In particular, steps b) and c) are amended with respect to how the method is described

on page 36 of the application as filed (or claim 12 as filed) in the following way:

*"... b) performing a first washing step comprising bringing the one or more soiled ware in contact with ~~the~~ an aqueous cleaning composition ~~like defined above~~, wherein the cleaning composition contains both a detergent with a peroxidation catalyst and a rinse aid with an oxygen source; wherein the detergent is a detergent mixture; and*  
*c) performing a rinse step ~~in which~~ contacting the one or more soiled ware with the unused rinse aid solution with an oxygen source is brought in contact with the one or more soiled ware, wherein while the ware is covered with the cleaning composition."*

3.2 The Board agrees with the Opponent that at least some of the above discussed omissions are not allowable under Article 123(2) EPC. In particular, the reference to "the unused rinse aid" in combination with the omission of "an oxygen source" leads to a subject-matter that extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

Furthermore the skilled reader is left in doubt as to the origin and nature of the "rinse aid": on the one hand, the term "the" appears to suggest that the rinse aid in step c) is the same as the one used in step b). In combination with the concept "unused", this could indicate that the rinse aid is added in excess in step b) (so that part of it remains "unused") and is somehow recovered to be used in the rinse step. However, such embodiment is not supported by the content of the application as filed. On the other hand, if the rinse aid defined in step c) is considered to be freshly added (i.e. different from the one used in step b)),

the omission of the feature "oxygen source" implies that the rinse aid used in this step encompasses alternatives with no oxygen source. Again, this interpretation is not supported by the application as filed. Thus, the subject-matter of claim 1 extends beyond the content of the application as filed, irrespective of how the features in question are interpreted. It follows that auxiliary request 1 does not meet the requirements of Article 123(2) EPC.

4. Auxiliary request 2 - Articles 123(2), 54 and 56 EPC
  - 4.1 The subject-matter of claim 1 according to this request has been amended in line with the wording used to describe the method on page 36 and claim 12 of the application as filed.
  - 4.2 The Board notes that with the new wording, the objections under Article 123(2) and 54 EPC are considered to be overcome.
  - 4.3 The Opponent has not raised any objection under Articles 123(2), 54 or 56 EPC - either in the written proceedings or at the oral proceedings - against the maintenance of the patent on the basis of auxiliary request 2. The Board sees also no reason to raise further objections (ex-officio) under Articles 123(2), 54 or 56 EPC.
  - 4.4 Consequently, the Board concludes that auxiliary request 2 meets the requirements of Articles 123(2), 54 and 56 EPC.
5. Auxiliary request 2 - Article 84 EPC

- 5.1 At the oral proceedings, the Proprietor adapted the description to the claims of auxiliary request 2, in particular by modifying the wording of pages 3 and 5 of the patent specification.
- 5.2 The Opponent argued that the remaining sentences in paragraph [0042] of the amended version of page 5 were still not compliant with the EPC. In particular, the sentence "*Thereby, the inventive concept arose by providing a concept with bringing the catalyst into the sump by means of the detergent and oxygen source by the rinse aid*" conveyed the incorrect idea that the well known concept of introducing the catalyst together with the detergent or cleaning composition, and the oxygen source together with the rinse aid, would in itself provide an inventive contribution. This, however, was not consistent with the way the invention was defined in claim 1 at issue.
- 5.3 It is the Board's view that, in order to meet the requirement of support by the description under Article 84 EPC, any reference in the specification to the features of the invention must be consistent with (i.e. provide support for) the invention as claimed.

It is however not apparent to the Board why the content of amended page 5 (par. [0042]) should be considered to be inconsistent with the definition of the invention in claim 1 at issue, because the contested passage is not drafted in a manner that would suggest that the features described therein constitute the invention as such. In other words, amended paragraph [0042] does not imply that the inventive concept is solely based on providing the catalyst with the detergent and the oxygen source with the rinse aid. Rather, said passage merely states that the invention relies on a concept in

which the oxygen source and the catalyst are added separately; these features therefore form part of the inventive concept, without representing the inventive concept in its entirety, which is consistent with, and thus provides support for, the invention as defined in claim 1 at issue.

- 5.4 It follows that the description has been adapted to the new set of claims and so auxiliary request 2 is considered to meet the requirement of support by the description under Article 84 EPC.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form in the following version:

Description: Pages 2, 4 and 6 to 17 of the patent specification and amended pages 3 and 5 filed during oral proceedings on 9 September 2025.

Claims: No. 1 to 11 according to the second auxiliary request filed as annex to the reply dated 6 July 2023.

Drawings: Fig. 1 of the patent specification.

The Registrar:

The Chairman:



A. Vottner

J.-M. Schwaller

Decision electronically authenticated