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**Datasheet for the decision
of 3 July 2025**

Case Number: T 1413/23 - 3.3.07

Application Number: 14719334.6

Publication Number: 2988830

IPC: A61Q5/04, A61K8/42, A61K8/73,
A61K8/87, A61K8/81

Language of the proceedings: EN

Title of invention:
COMPOSITION FOR STRAIGHTENING KERATIN FIBRES, COMPRISING A UREA
AND/OR A UREA DERIVATIVE AND A NONIONIC, CATIONIC, AMPHOTERIC
OR ANIONIC ASSOCIATIVE POLYMERIC THICKENER, PROCESS AND USE
THEREOF

Patent Proprietor:
L'OREAL

Opponent:
Beiersdorf AG

Headword:
Composition for straightening keratin fibers/L'OREAL

Relevant legal provisions:
RPBA 2020 Art. 12(4), 12(6), 13(2)
EPC Art. 56

Keyword:

Admission of the main request and auxiliary requests 1-4 (Yes)

Admission of new submissions (No)

Admission of new arguments based on D8-D12 (No)

Main request - Inventive step (Yes)



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Case Number: T 1413/23 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 3 July 2025

Appellant: Beiersdorf AG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 June 2023 concerning maintenance of the
European Patent No. 2988830 in amended form.**

Composition of the Board:

Chairman A. Usuelli
Members: D. Boulois
A. Jimenez

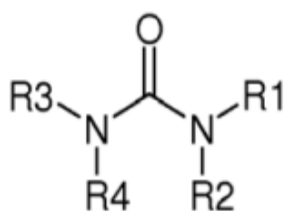
Summary of Facts and Submissions

- I. European Patent 2 988 830 had been opposed under Article 100 (a) EPC on the grounds that its subject-matter lacked novelty and inventive step.
- II. The appeal lies from the decision of the opposition division that the patent in amended form meets the requirements of the EPC. The decision was based on the claims as granted as main request and on auxiliary request 1 filed on 17 May 2022.

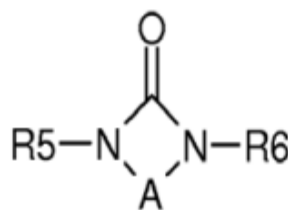
Claim 1 of auxiliary request 1 read:

"1. Cosmetic composition comprising:

(a) at least 2% by weight, relative to the total weight of the composition, of one or more compounds chosen from compounds of formula (I) or (II), salts thereof or hydrates thereof:



(I)



(II)

in which:

- R1, R2, R3 and R4 represent, independently:

- (i) a hydrogen atom or
- (ii) a linear or branched, cyclic or acyclic C₁-C₅ lower alkyl or alkenyl radical, a C₁-C₅ alkoxy radical, a C₆-C₁₈ aryl radical, a 5- to 8-membered heterocyclic radical; these radicals being optionally substituted

with a radical chosen from the following radicals:

hydroxyl, (di) (C₁ -C₄) (alkyl) amino, preferably dimethylamino, carboxyl, halogen, C₆ -C₁₈ aryl, carboxamide and N-methylcarboxamide;

it being understood that:

- when R₁, R₂ and R₃ represent a hydrogen atom, R₄ may denote a carboxamide, methoxy, ethoxy, 1,2,4-triazolyl, cyclopentyl, (C₁ -C₆) alkylcarbonyl such as acetyl, or (C₁-C₆) alkoxy carbonyl radical such as methoxycarbonyl or ethoxycarbonyl, -CO-CH=CH-COOH, phenyl optionally substituted with a chlorine atom or a hydroxyl, benzyl or 2,5-dioxo-4-imidazolidinyl radical;

- when R₁ and R₃ represent a hydrogen atom, R₂ may represent a hydrogen atom or a methyl or ethyl radical and R₄ may represent an acetyl radical;

- when R₁=R₂=H, R₃ and R₄ can form, with the nitrogen atom that bears them, a piperidine, 3-methylpyrazole, 3,5-dimethylpyrazole or maleimide ring;

- R₁ and R₂ and also R₃ and R₄ can form, with the nitrogen atom that bears them, an imidazole ring;

- R₅ and R₆ represent, independently of each other:

(iii) a hydrogen atom or

(iv) a linear or branched, cyclic or acyclic C₁ -C₅ lower alkyl, acyl or alkenyl radical, a C₁ -C₅ alkoxy radical, a C₆-C₁₈ aryl radical, a 5- to 8-membered heterocyclic radical; these radicals being optionally substituted with a radical chosen from the following radicals: hydroxyl, amino, dimethylamino, carboxyl, halogen, C₆ -C₁₈ aryl, carboxamide and N-

methylcarboxamide; - A is a radical chosen from the following radicals: CH₂-CH₂, CH=CH, CH₂-CO, CO-NH, CH=N, CO-CO, CHOH-CHOH, (HOOC)CH-CH, CHOH-CO, CH₂-CH₂-CH₂, CH₂-NH-CO, CH=C(CH₃)-CO, NH-CO-NH, CH₂-CH₂-CO, CH₂-N(CH₃)-CH₂, NH-CH₂-NH, CO-CH(CH₃)-CH₂, CO-CH₂-CO, CO-NH-CO, CO-CH(COOH)-CH₂, CO-CH=C(COOH), CO-CH=C(CH₃),

CO-C(NH₂)=CH, CO-C(CH₃)=N, CO-CH=CH, CO-CH=N and CO-N=CH,

(b) one or more nonionic, cationic, or amphoteric polymeric thickeners chosen from nonionic, cationic, or amphoteric associative thickening polymers and the said composition being free of reducing agent."

III. The documents cited during the opposition proceedings included the following:

D1: US 2005/042268 A1
D2: DE10 2006 034 531 A1
D3: EP1 949 887 A2
D4: EP 1 700 594 A1
D5: WO 03/086291 A2
D6: WO 99/49841 A1
D7: Experimental report

IV. According to the decision under appeal, the claims as granted were not novel over D2, in particular in view of the disclosure of "Rezeptur 2" of D2.

The division could not consider D2 as novelty destroying for the subject-matter of auxiliary request 1, because no polymer in the composition of "Rezeptur 2" of D2 fell under component (b) of the amended claim 1 of AR1.

D2 was considered to be the closest prior art. The objective technical problem was to be seen in provision of further thickened cosmetic compositions to be applied to the hair. The examples in the patent, especially the example employing Aculyn 44 non-ionic associative thickening polymer in Table 1, showed that said problem had been solved and these compositions

could be applied to straighten the hair. The claimed solution was inventive over D2.

V. The opponent (hereinafter the appellant) filed an appeal against said decision.

VI. With the statement setting out the grounds of appeal dated 13 October 2023, the appellant submitted the following items of evidence:

D8: Umbach, Kosmetik und Hygiene, 2004, p. 235-236 and 264-277
D9: Ullmann's Encyclopedia of Industrial Chemistry, 2003, Band 16, Hair Preparations, p. 99 and 117-121

D10: Remington, The Science and Practice of Pharmacy, 2005, p. 1091 and 1424, Urea

D11: Römpp Chemie Lexikon, 1995, Band 3, p. 1683-1684, Haarverformungsmittel

D12: Hunnius Pharmazeutisches Wörterbuch, 1993, p. 657, Harnstoff

VII. With its reply to the statement of grounds of appeal dated 15 February 2024, the patent-proprietor (hereinafter the respondent), filed a main request and auxiliary requests 1 to 5.

VIII. The subject-matter of claim 1 of the main request differed from claim 1 of the request maintained by the opposition division in the definition of the compound (b), which read now, the differences compared with claim 1 as maintained by the opposition division shown in bold::

"(b) one or more nonionic **or** cationic **associative thickening amphiphilic polymers chosen from celluloses and polyurethanes comprising at lease one fatty chain**

containing from 10 to 30 carbon atoms and at least one hydrophilic unit;".

IX. With a letter dated 4 July 2024, the respondent submitted a new evidence:

D13: rapport expérimental

X. A communication from the Board, dated 6 March 2025, was sent to the parties. In it, the Board expressed its preliminary opinion that the requests were admissible but that D8-D12 should not be admitted into the appeal proceedings. The Board noted furthermore that D13 was not relevant for the main request, and that the main request appeared to be novel and inventive.

XI. Oral proceedings took place on 3 July 2025.

XII. The arguments of the appellant may be summarised as follows:

Admission of the main request and auxiliary requests 1-4 into the appeal proceedings

These requests should have been filed during the opposition proceedings, since they have been filed to overcome the novelty objections over "Rezeptur 2" of D2. The patent proprietor should have examined the further components of "Rezeptur 2" and should have identified that the copolymer VP/hexadecene was also non-ionic and relevant for the novelty of claim 1.

Admission of the submissions of the appellant of
5 June 2025 into the appeal proceedings

These submissions were a response to the new requests of the respondent. The requests filed by the respondent were indeed amendments to the respondent's case, and it was a surprise for the appellant that the preliminary opinion of the Board was positive with regard to their admissibility. Moreover, no deadlines were given by the Board for a reply to the respondent's submission.

Admission of the arguments of the appellant based on
documents D8-D12 in relation to the main request

D8-D12 were documents showing the common general knowledge in the technical field of the contested patent.

Main request - Inventive step

The closest prior art was D2, in view of the "Rezeptur 2". There was no evidence of an effect, so that the problem over D2 was the provision of an alternative composition. D2 suggested the use of a polysaccharide as thickener, and the use of cetyl hydroxyethylcellulose was known from D6.

XIII. The arguments of the respondent may be summarised as follows

Admission of the main request and auxiliary requests
1-4 into the appeal proceedings

The objection of lack of novelty over "Rezeptur 2" of D2 in view of the the copolymer VP/hexadecene was raised for the first time in the appeal proceedings.

The filing of the requests was a response to this new objection.

Admission of the submissions of the appellant of 5 June 2025 into the appeal proceedings

The submissions were filed at a late stage of the appeal proceedings, while they could have been filed in direct response of the respondent's submissions. No explanations were given to possible exceptional circumstances as required by Article 13(2) RPBA.

Admission of the arguments of the appellant based on documents D8-D12 in relation to the main request

These documents had not been cited by the appellant in the context of the main request, and could have been filed earlier during the opposition proceedings. The documents were furthermore not relevant and D10-D11 had no publication date.

Main request - Inventive step

D2 did not relate to compositions for treating the hair, and there was no suggestion for this purpose in this document. The same applied to D6 which related to skin compositions. The claimed solution was not obvious.

XIV. Requests

The appellant requested that the decision under appeal be set aside and the patent be revoked. The appellant also requested that document D13 as well as the main request and auxiliary requests 1-4 filed with the reply

to the statement of grounds of appeal not be admitted into the proceedings.

The respondent requested that the decision under appeal be set aside and the patent be maintained according to the sets of claims filed as main request or auxiliary requests 1-5 with the reply to the appellant's statement of grounds of appeal. The respondent also requested that documents D8 to D12 as well as the submissions of the appellant of 5 June 2025 not be admitted into the proceedings.

Reasons for the Decision

1. Admission of the main request and auxiliary requests 1-4 into the appeal proceedings

1.1 The main request and auxiliary requests 1-4 are new requests filed by the respondent with its reply to the statement of grounds of appeal. Auxiliary request 5 filed on the same date corresponds to auxiliary request 3 filed during the opposition proceedings and is not objected to with regard to admissibility.

1.2 The submission of these new main and auxiliary requests 1-4 is an amendment to the respondent's case and the Board has discretion to admit them pursuant to Articles 12(4) RPBA.

Moreover, the Board shall not admit evidence which should have been submitted in the proceedings leading to the decision under appeal (Article 12(6) RPBA).

1.2.1 In the present case, the new main request and new auxiliary requests 1 to 4 are a direct response to the new argument regarding the objection of lack of novelty

raised by the appellant in its statement of grounds of appeal, according to which the subject-matter of claim 1 of auxiliary request 1 maintained by the opposition division is not new in relation to composition 2 (Rezeptur 2) on page 9 of document D2, in view of the presence of the non-ionic copolymer VP/hexadecene. The amendments made to claim 1 of these requests are furthermore suitable to address the newly raised objection.

The new main request and these new auxiliary requests 1 to 4 could not have been filed during the opposition proceedings, since this objection based on the presence of the VP/Hexadecene copolymer in composition 2 (Rezeptur 2) on page 9 of D2 was raised for the first time in the appellant's statement of grounds of appeal. During the opposition proceedings, this copolymer had not been identified by any party as falling under the scope of claim 1 as maintained by the opposition division. In particular, neither the appellant, nor the opposition division had raised this argument either during the written procedure or during the oral proceedings, as evidenced by the minutes of the oral proceedings.

1.2.2 Consequently, the main request and auxiliary requests 1-4 are admitted into the appeal proceedings (Article 12(4) and 12(6) RPBA

2. Admission of the submissions of the appellant of 5 June 2025 into the appeal proceedings

2.1 In the present appeal proceedings, the main request and auxiliary requests 1-5 were filed by the respondent in response to the statement of grounds of appeal on the 16 February 2024. In its letter dated 4 July 2024, the

respondent submitted the further experimental report D13.

The first response of the appellant to these submissions came after the Board had issued its preliminary opinion, namely in its letter dated 5 June 2025. In this letter, the appellant objected to the admissibility of the main request, of the auxiliary requests 1-4 and of D13 and submitted arguments regarding inventive step of the main request and the auxiliary requests.

The appellant justified the late filing of these submissions by the absence of any deadline set by the Board for a reply, in particular to the submissions of the respondent (see point 5.1 of letter dated 5 June 2025). According to the appellant, the positive opinion of the Board with regard to the admissibility of the requests constituted a surprise.

- 2.2 In the present case, the Board issued the summons to oral proceedings in June 2024 and its preliminary opinion in March 2025. Hence, the notification of the summons and the preliminary opinion occurred before the appellant filed its submissions of June 2025. This means that Article 13(2) RPBA is relevant. That provision indicates that: "Any amendment to a party's appeal case made...after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned".

The Board considers that the filing of a new main request and new auxiliary requests 1-4 with the respondent's reply to the statement of grounds of

appeal constitutes exceptional circumstances justifying a response from the appellant. Even though such a response could have been filed without awaiting the Board's preliminary opinion, the fact remains that the issue of the admissibility of these amendments to the respondent's case was discussed for the first time in the Board's preliminary opinion. The appellant's arguments in this respect are legitimate and must therefore be admitted into the proceedings.

The submissions and the arguments provided by the appellant with regard to inventive step remain in the frame of the corresponding objections raised in the opposition proceedings or in the statement of grounds of appeal against the requests then on file; the cited documents and the topics of discussion do neither differ in substance from those identified in the preliminary opinion of the Board. These arguments are therefore a legitimate reaction to the filing of the new requests by the respondent. The waiver of the novelty attacks contributes furthermore to the procedural economy.

The Board considers therefore that the submissions of the letter dated 5 June 2025 merely adapt the arguments on file to the newly filed requests without complicating the procedure or directing it in a new direction. Consequently they are admitted into the appeal proceedings (Article 13(2) RPBA).

3. Admission of the arguments of the appellant based on documents D8-D12 in relation to the main request

- 3.1 Documents D8-D12 have been filed with the statement of grounds of appeal, and were cited by the appellant in the context of the objections of lack of novelty and

inventive step over former auxiliary request 3, corresponding now to auxiliary request 5 in the appeal proceedings. Said documents were not cited against the request maintained by the opposition division, namely the former auxiliary request 1, nor against former auxiliary request 2.

In its letter dated 5 June 2025, the appellant repeated that these documents were a reaction to former auxiliary request 3 and explained that these documents serve as evidence of the general knowledge of an average person skilled in the art, since they explain the technical background of hair straightening and demonstrate that suitable means for this purpose were already known before the priority date (see point 4 of the letter).

- 3.2 During the oral proceedings before the Board, the documents D8-D12 were cited for the first time by the appellant in the context of the discussion on inventive step of the main request.

These arguments based on D8 to D12 were objected to by the respondent.

- 3.3 The submission of arguments based on documents D8-D12 in the context of the discussion on inventive step of the main request is a new line of argumentation and an amendment to the appellant's case, for which Article 13(2) RPBA is relevant.

In the present case, the Board cannot find any exceptional circumstances, justified by cogent reasons, why the submission is to be taken into account. The appellant should have presented these arguments earlier considering that the main request has been on file

since February 2024. At the very least, these arguments should have been introduced in the appellant's last submissions dated 5 June 2025.

Moreover, the Board is not convinced by the technical relevance of these documents:

- D8 is a document of common general knowledge disclosing that urea and reducing agents may be used in compositions for straightening hairs, an aspect which is already acknowledged by the contested patent, which tries to avoid the use of reducing agents (see specification, par. [0005]-[0022]).
- D9 mentions the combined use of urea and urease in hair fixing compositions (see D9, page 119), and the same information is provided in D12;
- D10 mentions that urea promotes the hydration of keratin and has a keratolytic effect (see D10, page 1091);
- D11 discloses that alkaline substances hydrolytically break the disulfide bond between the peptide chains of keratin (D11, p. 1683);

Hence, these documents do not seem to pertain to composition similar to those defined in claim 1 of the main request. Consequently, the Board does not see any reason to admit any technical argument based on documents D8-D12 in relation to the main request (Article 13(2) RPBA).

4. Main request - Inventive step

- 4.1 The claimed invention relates to a composition for long-lasting straightening of keratin fibers, which do not involve the use of alkaline agents or reducing agents (see par. [022] of the specification).

4.2 D2 was considered to represent the closest prior art by the opposition division in its decision for assessing inventive step of the then auxiliary request 1.

D2 relates to relates to compositions for skin cleansing comprising hydroxyethyl urea and a low concentration of thickener. These compositions present the advantage of reducing the risk of residue formation on the skin surface when the composition is rubbed into the skin (see paragraphs [0003] and [0007-0009]). The composition 2 ("Rezeptur 2") of page 9, comprises 5% by weight of hydroxyethyl urea, 0.05% by weight of acrylates/crosslinked C10-30 alkyl acrylate, 0.40% by weight of xanthan gum and 0.50% by weight of VP/Hexadecene copolymer. D2 discloses further compositions on pages 13-14 and 19-20 having similar components to compositions 2.

The compositions of D2 do not contain thickeners as claimed in claim 1 of the main request, i.e. "one or more nonionic or, cationic associative thickening amphiphilic polymers chosen from celluloses and polyurethanes comprising at least one fatty chain containing from 10 to 30 carbon atoms and at least one hydrophilic unit".

There is furthermore no disclosure of an application to the hair in D2, and a process or use for straightening keratin fibres is not suggested in D2.

4.3 The appellant defines the problem as the provision of an alternative composition while in its reply (see page 7) the respondent sees the problem in the provision of a compositions for straightening the hair.

- 4.4 The examples of the patent, in particular example 1 , and the experiments D7 were cited by the respondent in support of a technical effect.

The Board notes that the examples of the patent and D7 relate only to compositions containing cetylhydroxyethylcellulose as thickener, whereas no experiments are disclosed in relation to compositions containing the claimed derivatives of polyurethane as thickener. Nevertheless, considering the results for the compositions tested, the Board finds no reason to doubt that the claimed compositions can be used for straightening the hair.

Accordingly, in the Board's opinion the technical problem can be defined as the provision of compositions for straightening the hair.

- 4.5 The opposition division concluded that the claimed solution according to the then auxiliary request 1 was inventive, since there is no motivation in D2 or any other document in the procedure to exchange any of the employed two polymers in the exemplified "Rezeptur 2" with the types of associative thickeners claimed in claim 1 or to add them. Even if a skilled person would have used alternative thickeners, there is a teaching in [0035] of D2 to employ e.g. SiO₂, polysaccharides and especially acrylates, but at no instance this document directs towards any associative polymer defined in claim 1.

The Board agrees with the conclusion of the opposition and considers furthermore that there is no disclosure or suggestion in D2 that the disclosed composition can be used or is suitable for straightening hair, since D2 relates to compositions for cleansing and protecting

the skin. Even if paragraph [0065] of D2 mentions the possibility of applying the composition to the hair, this mention is done in a very general way, and a potential application to the hair can only be envisaged for the uses mentioned in paragraphs [0060-0063] of D2, namely for the skin protection in particular against UV or for a make up composition.

Documents D1, D3-D6 were further cited by the appellant in the context of the obviousness of the solution:

- D1 relates to a pharmaceutical composition intended to improve the transdermal delivery of a hormone in the body (see the abstract, paragraphs [0002] and [0046], and claim 1),
- D3 relates to a composition intended for firming and smoothing the skin such as "anti-cellulite composition" (see paragraphs [0001] and [0004]),
- D4 relates to a shaving composition (see claim 1 and paragraph [0001]),
- D5 relates to a dermatological composition intended for the treatment of skin disorders (see paragraphs [0001] and [0020]), and
- D6 relates to a composition for moisturizing the skin, without leaving a greasy effect on the skin (page 2, lines 3-6 and 9-10 and page 11, lines 14-17).

Hence, none of the cited documents relate to hair compositions, or to the claimed thickeners.

Accordingly, none of these documents can offer any relevant guidance to a skilled person aiming to develop a composition for straightening the hair, starting from the disclosure of D2.

Consequently, the claimed subject-matter is inventive and the main request meets the requirements of Article 56 EPC.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the opposition division with the order to maintain the patent on the basis of the claims of the main request filed on 16 February 2024 with the reply to the statement of grounds of appeal and a description to be adapted thereto.

The Registrar:

The Chairman:



B. Atienza Vivancos

A. Usuelli

Decision electronically authenticated