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**Datasheet for the decision
of 30 October 2025**

Case Number: T 1542/23 - 3.3.02

Application Number: 16747661.3

Publication Number: 3325022

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A61L9/14

Language of the proceedings: EN

Title of invention:

WATER-BASED FRAGRANCE COMPOSITION, FRAGRANCE DELIVERY DEVICE,
AND METHOD OF PROVIDING A LONG-LASTING SCENT

Patent Proprietor:

S.C. Johnson & Son, Inc.

Opponent:

Reckitt & Colman (Overseas) Hygiene Home Limited

Relevant legal provisions:

EPC Art. 100(c), 56
RPBA 2020 Art. 13(2)

Keyword:

Grounds for opposition - amendments
Inventive step
Amendment after notification of a communication under Article
15(1) RPBA



Beschwerdekammern

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Case Number: T 1542/23 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 30 October 2025

Appellant: Reckitt & Colman (Overseas) Hygiene Home Limited
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 28 June 2023
rejecting the opposition filed against European
patent No. 3325022 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: A. Lenzen
M. Blasi

Summary of Facts and Submissions

- I. The opponent (appellant) lodged an appeal against the opposition division's decision (decision under appeal) to reject the opposition against European patent No. 3 325 022 (patent). The patent proprietor (respondent) replied to the appeal.
- II. Reference is made in the present decision to the following documents filed with the opposition division:
- D2 EP 0 194 017 A1
D3 US 2008/0023569 A1
- III. In preparation for the oral proceedings, which had been arranged at the parties' request, the board issued a communication under Article 15(1) RPBA. In it, the board summarised the parties' submissions from the statement of grounds of appeal and the reply thereto, and expressed its preliminary opinion on selected issues.
- IV. By letter dated 18 September 2025, the respondent filed a further substantive submission.
- V. Oral proceedings before the board were held by videoconference on 30 October 2025 in the presence of both the appellant and the respondent. During the oral proceedings, the board decided not to admit the appellant's new submission under Article 100(c) EPC into the appeal proceedings. At the end of the oral proceedings, the chairman announced the order of the present decision.

VI. The parties' final requests at the end of the oral proceedings, insofar as they are relevant to this decision, were as follows.

- The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- The respondent requested that the appeal be dismissed (main request), implying that the decision under appeal be upheld and the patent be maintained as granted.

VII. Summaries of the parties' submissions relevant to the present decision and key aspects of the decision under appeal are set out in the reasons for the decision below.

Reasons for the Decision

Main request (patent as granted) - Amendments
(Article 100(c) EPC)

1. Claim 1 of the main request reads as follows
(amendments shown compared to claim 1 as filed):

*"A water-based fragrance composition ~~comprising~~
consisting of:*

a) at least ~~about~~ 67 wt% water;

b) between ~~about~~ 5 and ~~about~~ 17 wt% of a first organic solvent, wherein the first organic solvent comprises one or more relatively volatile, water soluble, low molecular weight organic compound(s) having a boiling point less than ~~about~~ 100 °C, wherein the relatively volatile, water soluble, low

molecular weight organic compound(s) is selected from the group consisting of ~~alcohols, ethers, ketones, esters, or combinations thereof~~: **ethanol, isopropanol, acetone, or combinations thereof;**

c) 5 wt% or less of at least one fragrance formulation;

d) ~~between about 0 and about~~ **up to** 22 wt% of a second organic solvent, wherein the second organic solvent comprises one or more moderately volatile, water soluble organic compound(s) having a boiling point greater than or equal to ~~about~~ 100 °C and less than or equal to ~~about~~ 300 °C, wherein the moderately volatile water soluble organic compound(s) is selected from the group consisting of ~~polyhydric alcohols (including glycols), glycol ethers, glycol ether esters, sulfoxides, ethers, polyethers, cyclic ethers, lactones, carbonates, carboxylic acids, or combinations thereof~~
dipropylene glycol methyl ether; propylene glycol methyl ether; dipropylene glycol; propylene glycol; pentylene glycol; caprylyl glycol; 1,2-hexanediol; propylene glycol methyl ether acetate; dipropylene glycol methyl ether acetate; propylene glycol monopropyl ether; ethylene glycol mono n-propyl ether; propylene glycol monoethyl ether; diethylene glycol monobutyl ether; ethylene glycol monohexyl ether; dimethoxymethane; dimethylsulfoxide, acetonitrile; and combinations thereof; and

e) optionally one or more pH adjuster;

wherein the composition is free of any material with a boiling point greater than 300 °C."

For the sake of simplicity, the components defined in features a) to e) of claim 1 of the main request above are referred to below as components a), b), c), d) and e), respectively.

Since component e) is optional, the water-based fragrance composition according to claim 1 of the main request can take the following two forms:

- a water-based fragrance composition consisting of components a) to d) (first embodiment)
- a water-based fragrance composition consisting of components a) to e) (second embodiment)

2. Relative to claim 1 as filed, the following amendments have been made in claim 1 of the main request.

- (i) The water-based fragrance composition no longer comprises certain components but rather consists of them.
- (ii) The list of generic compounds under component b) has been replaced with a list of specific compounds.
- (iii) The wording "*between about 0 and about 22 wt%*" has been replaced by the wording "*up to 22 wt%*".
- (iv) The list of generic compounds under component d) has been replaced with a list of specific compounds.
- (v) The feature "*e) optionally one or more pH adjuster*" has been added.
- (vi) The feature "*wherein the composition is free of any material with a boiling point greater than 300 °C*" has been added.

3. Objections presented in the statement of grounds of appeal

3.1 Claim 1

3.1.1 The appellant argued that amendment (i) in the first and second embodiments above resulted in added subject-matter, as follows.

- There was no verbatim disclosure in the application as filed of a water-based fragrance composition "*consisting of*" certain components.
- The lower percentage limits for components a) to d) in claim 1 as filed added up to significantly less than 100 wt%. Therefore, the application as filed did not intend the water-based fragrance composition to actually consist of components a) to d), contrary to the first embodiment.
- Claim 22 and paragraph [0026] of the application as filed disclosed a pH adjuster as part of the water-based fragrance compositions of the invention. However, contrary to the decision under appeal, they did not provide a basis for amendment (i) in the second embodiment.

3.1.2 These arguments did not convince the board for the following reasons.

- On pages 23 to 46, the application as filed discloses 81 exemplary water-based fragrance compositions. As pointed out by the respondent, each of these compositions consists of compounds corresponding to components a), b), c) and d) of claim 1 of the main request, and the amounts of these compounds fall within the ranges specified in claim 1 for the respective components. Although

these exemplary compositions naturally contain specific individual compounds, they still clearly indicate a preference for compositions of the type provided by the first embodiment, i.e. those consisting of components a), b), c) and d). In other words, the exemplary compositions of the application as filed provide a pointer for the amendment to "consisting of" in the first embodiment of claim 1 of the main request.

- The exemplary water-based fragrance compositions of the application as filed do not contain a compound according to component e) of claim 1 of the main request, i.e. a pH adjuster, which is a necessary further component of the compositions of the second embodiment. However, paragraph [0026] of the application as filed discloses component e) - in addition to components a) to d) - as the only further optional component of the water-based fragrance composition according to the invention. The board agrees with the respondent that the skilled person would therefore derive from the application as filed that, even in the presence of component e), a preference is given to a composition consisting of components a) to e), in accordance with the second embodiment.
- The fact that the lower limits of components a) to d) amount to less than 100 wt% is not grounds for an objection under Article 100(c) EPC since, as stated in the decision under appeal, values within the claimed ranges can be chosen to total 100 wt%.

In its statement of grounds of appeal, the appellant also criticised the fact that the respondent had relied, before the opposition division, on decision T 1271/13 in support of amendment (i). However, neither the opposition division's decision nor the present

decision of the board is based on that case. Accordingly, this argument is not relevant to the present proceedings.

3.2 Claims 2 to 14

The appellant argued that claims 2 to 14 of the main request contained added subject-matter for the same reasons as claim 1.

However, these objections cannot succeed since claim 1 of the main request, as set out above, does not contain added subject-matter.

4. Objections presented at the oral proceedings before the board

4.1 In claim 1 of the main request (see the wording under point 1 above), component b) is defined as follows:

"a first organic solvent, wherein the first organic solvent comprises one or more ... compound(s) ... selected from the group consisting of: ethanol, isopropanol, acetone, or combinations thereof"

The wording of claim 1 thus stipulates that component b) may in fact comprise additional compounds which are different from those specifically mentioned (*"ethanol, isopropanol, acetone, or combinations thereof"*).

4.2 At the oral proceedings before the board, the appellant submitted that the wording of component b) could only find a basis in claim 5 as filed reciting the same specific compounds. However, claim 5 as filed required the first organic solvent to be selected from this

group of compounds such that it could not comprise additional compounds. Thus, although the water-based fragrance composition was limited by amendment (i) above, the definition of component (b) was actually broadened compared to the application as filed. There was no basis for this amendment in the application as filed.

The appellant raised the same objection, *mutatis mutandis*, against component d) of claim 1 of the main request in view of claim 4 as filed.

- 4.3 The appellant's submission essentially amounts to an objection to amendments (ii) and (iv) in claim 1 of the main request (see point 2 above). However, until the oral proceedings before the board, the appellant had never objected to these amendments nor had it invoked claims 4 or 5 as filed in its assessment of added subject-matter with regard to amendment (i). The appellant's submission, therefore, amounted to an amendment of its appeal case. Under Article 13(2) RPBA, such an amendment shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned. However, the appellant did not submit anything to support any such exceptional circumstances. Therefore, at the oral proceedings and at the respondent's request, the board decided not to admit the appellant's above submission into the appeal proceedings.

5. Therefore, Article 100(c) EPC does not prejudice maintenance of the patent as granted.

Main request (patent as granted) - Inventive step
(Articles 100(a), 52(1) and 56 EPC)

6. The water-based fragrance composition according to claim 1 is intended for use in wick air fresheners (see figure 2 of the patent). In such devices, a wick conveys the fragrance composition to, for example, a mesh or similar surface from which the composition evaporates into the surrounding air.

7. Closest prior art

In its assessment of inventive step, the appellant started from comparative example 1A of D3 (paragraphs [0109] to [0111]) as the closest prior art. This comparative example discloses the following conventional hydro-alcoholic composition for use in wick air fresheners:

ingredient	amount (in wt%)
deionised water	70.00
isopropanol	12.00
perfume base	6.00
PEG-40 hydrogenated castor oil	12.00

8. Distinguishing features

The parties agreed that PEG-40 hydrogenated castor oil is a surfactant having a boiling point greater than 300 °C and that, therefore, the subject-matter of claim 1 of the main request is distinguished from the composition above as follows.

(A) The water-based fragrance composition of claim 1 comprises less fragrance (at most

5 wt% of a fragrance formulation according to claim 1 vs. 6 wt% of a perfume base in comparative example 1A of D3).

- (B) The water-based fragrance composition of claim 1 comprises up to 22 wt% of a second organic solvent.
- (C) The water-based fragrance composition of claim 1 is free of any material with a boiling point of greater than 300 °C.

9. Technical effect and objective technical problem

- 9.1 It was common ground between the parties that, as is also disclosed in D3 (paragraphs [0004] and [0008]) and D2 (page 1, lines 21 to 32), the use of high-boiling materials in fragrance compositions - such as the surfactant PEG-40 hydrogenated castor oil of comparative example 1A of D3 - entails certain disadvantages when such fragrance compositions are used in wick air fresheners. Specifically, during operation, these high-boiling materials tend to accumulate within the wick and on the surface from which the fragrance composition evaporates into the surrounding air. This accumulation, or clogging, gradually reduces the evaporation rate of the fragrance composition over time.

In view of this, the parties agreed at the oral proceedings before the board that distinguishing feature (C) is associated with an improved emission profile.

- 9.2 As set out by the respondent, the 81 exemplary compositions disclosed in the application as filed have a clear appearance at room temperature, indicating good solubilisation of the fragrance formulation

(component c)) in the water-based fragrance composition.

In comparison, the clarity tests for the comparative compositions in D3 (paragraph [0160], table 16) generally show poorer results. Only composition #1, which is comparable to comparative example 1A, is rated as clear at room temperature (see D3, tables 1 and 15).

Therefore, it may also be accepted that the water-based fragrance composition according to claim 1 of the main request at least maintains the characteristics of comparative example 1A of D3 with respect to clarity and dissolution of fragrance, despite the absence of the surfactant PEG-40 hydrogenated castor oil.

9.3 On the basis of the above considerations, the objective technical problem can be formulated, in line with the respondent's submissions, as the provision of a water-based fragrance composition exhibiting an improved emission profile while maintaining clarity.

10. Obviousness

In view of the teaching of D3 (paragraphs [0004] and [0008]) as set out above, the board concurs with the appellant that, in attempting to solve the objective technical problem, the skilled person would have focused on the surfactant contained in the comparative composition 1A of D3 (PEG-40 hydrogenated castor oil). However, as argued by the respondent, the skilled person would not have simply omitted this surfactant without replacement, since it serves to solubilise the perfume base, and they would have expected that merely omitting it would adversely affect the solubilisation

of the perfume base and the clarity of the fragrance composition.

In seeking a possible replacement for the surfactant while maintaining solubilisation and clarity, it must be taken into account that D3 already proposes a solution to the problem associated with the presence of (high-boiling) surfactants. However, D3 takes an entirely different approach from that of the patent. It adds to the compositions a solubilising-aid ingredient which is entirely different from the second organic solvent defined in claim 1 of the main request (D3, claim 1). Consequently, as correctly argued by the respondent, the skilled person would not have disregarded the solution already described in D3 and, in not disregarding it, i.e. by applying that solution, would not have arrived at the claimed invention.

Even if one were to follow the appellant's line of argument and accept that the skilled person would indeed have disregarded the solution already described in D3, the subject-matter of claim 1 would still not have been obvious, even if the skilled person, as argued by the appellant, had also taken D2 into account. D2 (page 3, line 24 to page 4, line 1) essentially teaches that surfactants in water-based fragrance compositions can be replaced by adding diethylene glycol monobutyl ether (DEGMBE) - i.e. a second organic solvent according to claim 1 of the main request - while maintaining solubilisation of the corresponding fragrance component. However, as submitted by the respondent and not contested by the appellant, D2 on the one hand requires significantly higher amounts of DEGMBE (D2, page 4, lines 29 to 31, according to which its amount is "*generally in the range 30 to 50%, although higher amounts can be used if*

desired") and on the other hand allows for considerably lower amounts of water (D2, page 7, table 1, which shows that the compositions comprising DEGMBE contain at most 60 wt% water) than those specified in claim 1 of the main request for the second organic solvent and for water, respectively. Consequently, even by applying the teaching of D2 to comparative example 1A of D3, the skilled person would not have arrived at the subject-matter of claim 1 of the main request. It follows that the subject-matter of claim 1 of the main request involves an inventive step.

11. The same reasoning applies to independent claims 10 and 12, which refer to the water-based fragrance composition of claim 1, as well as to dependent claims 2 to 9, 11, 13 and 14.
12. Consequently, Article 100(a) EPC, in conjunction with Articles 52(1) and 56 EPC, does not prejudice maintenance of the patent as granted either.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

M. O. Müller

Decision electronically authenticated