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**Datasheet for the decision
of 9 January 2026**

Case Number: T 0041/24 - 3.3.03

Application Number: 15864079.7

Publication Number: 3224300

IPC: C08G73/00, C08L101/00,
A01N33/12, A01N25/10,
A01N31/02, A01N25/24, A01P1/00

Language of the proceedings: EN

Title of invention:

SURFACE DISINFECTANT WITH RESIDUAL BIOCIDAL PROPERTY

Patent Proprietor:

MICROBAN PRODUCTS COMPANY

Opponent:

Reckitt Benckiser Health Limited

Relevant legal provisions:

RPBA 2020 Art. 12(8), 15(3)
EPC R. 139
EPC Art. 123(2)

Keyword:

Correction of error - immediately evident that nothing else
could have been intended (yes)

Decisions cited:

G 0003/89, G 0011/91



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Case Number: T 0041/24 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 9 January 2026

Appellant: MICROBAN PRODUCTS COMPANY
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Respondent: Reckitt Benckiser Health Limited
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 November 2023 concerning maintenance of the
European Patent No. 3224300 in amended form.**

Composition of the Board:

Chairman D. Semino
Members: M. Barrère
A. Bacchin

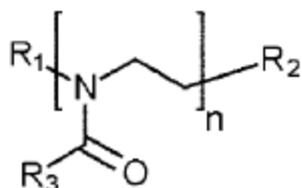
Summary of Facts and Submissions

I. The appeal of the patent proprietor lies against the interlocutory decision of the opposition division concerning maintenance of European Patent number 3 224 300 in amended form on the basis of the claims of the sixth auxiliary request filed with letter of 22 September 2022 and an adapted description. This decision was also based on the amended claims of a main request and of the first to fifth auxiliary requests, all filed with letter dated 22 September 2022.

II. Claim 1 of the main request read as follows:

"1. A liquid disinfectant formulation for healthcare applications imparting a residual biocidal property, the disinfectant formulation comprising:

0.1 to 5% of polymer binder, wherein the polymer binder is an oxazoline homopolymer having a structure of:



wherein

R1 is a hydrogen, alkyl, alkenyl, alkoxy, alkylamino, alkynyl, allyl, amino, anilino, aryl, benzyl, carboxyl, carboxyalkyl, carboxyalkenyl, cyano, glycosyl, halo,

hydroxyl, oxazolinium mesylate, oxazolinium tosylate, oxazolinium triflate, silyl oxazolinium, phenolic, polyalkoxy, quaternary ammonium, thiol, or thioether group;

R2 is a hydrogen, alkyl, alkenyl, alkoxy, alkylamino, alkynyl, allyl, amino, anilino, aryl, benzyl, carboxyl, carboxyalkyl, carboxyalkenyl, cyano, glycosyl, halo, hydroxyl, oxazolinium mesylate, oxazolinium tosylate, oxazolinium triflate, silyl oxazolinium, phenolic, polyalkoxy, quaternary ammonium, thiol, or thioether group or a macrocyclic structure;

R3 is ethyl; and

n is in a range of 1 to 1,000,000,

0.1 to 3% of a biocidal compound, wherein the biocidal compound is a quaternary ammonium compound selected from n-alkyl dimethyl benzyl ammonium chloride, di-n-octyl dimethyl ammonium chloride and a combination of N-alkyl dimethyl benzyl ammonium chloride 40%, N-octyl decyl dimethyl ammonium chloride 30%, di-n-decyl dimethyl ammonium chloride 15% and di-n-dioctyl dimethyl ammonium chloride 15%, and a carrier." (emphases here and below added by the Board)

Claim 1 of the sixth auxiliary request differed from claim 1 of the main request in that the following option was deleted from the list of possible quaternary ammonium compounds:

"a combination of N-alkyl dimethyl benzyl ammonium chloride 40%, N-octyl decyl dimethyl ammonium chloride 30%, di-n-decyl dimethyl ammonium chloride 15% and di-n-dioctyl dimethyl ammonium chloride 15%".

III. The contested decision, as far as it is relevant to the present appeal, can be summarised as follows:

- The correction of the chemical compound name "di-n-dioctyl ammonium chloride" present in granted claim 1 by "di-n-dioctyl dimethyl ammonium chloride" in claim 1 of the main request did not comply with the requirements of Rule 139 EPC. The same conclusion applied to claim 1 of the first to fifth auxiliary requests.
- The claims of the sixth auxiliary request complied with the requirements of Articles 123(2) and 56 EPC.

The patent was therefore maintained on the basis of the sixth auxiliary request.

IV. The patent proprietor (appellant) filed an appeal against said decision. With the statement of grounds of appeal, the appellant filed three sets of claims: one as the main request, and the other two as the first and second auxiliary requests.

V. The opponent (respondent) did not reply to the statement of grounds of appeal.

VI. The parties were summoned to oral proceedings and, subsequently, the Board issued a communication under

Article 15(1) RPBA. In that communication, the Board expressed its intention to set aside the decision and to remit the case to the opposition division with the order to maintain the patent on the basis of the claims of the first auxiliary request (point 8 of the communication).

- VII. With letter of 31 July 2025, the appellant withdrew their main request and the request for oral proceedings.
- VIII. In a further communication dated 7 August 2025 the Board expressed its intention, in the absence of a reaction from the respondent, to grant the first auxiliary request and cancel the oral proceedings.
- IX. With letter of 29 August 2025, the respondent stated that they would not attend to the oral proceedings.
- X. Thereafter the oral proceedings were cancelled.
- XI. The requests of the parties, which are relevant to the present decision, are as follows:
- (a) The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the first auxiliary request filed with the statement of grounds of appeal.
 - (b) The respondent did not actively participate in the appeal proceedings and did not file any request.
- XII. Claim 1 of the first auxiliary request corresponded to claim 1 of the main request on which the decision under appeal was based with the replacement of the chemical

name "di-n-dioctyl dimethyl ammonium chloride" by the chemical name "di-n-octyl dimethyl ammonium chloride".

- XIII. The parties' submissions, in so far as they are pertinent, may be derived from the reasons for the decision below. They essentially concerned the correction of the chemical name "di-n-dioctyl ammonium chloride" in granted claim 1.

Reasons for the Decision

1. Decision in written proceedings

The appellant had requested oral proceedings if the Board did not grant their main request. In its preliminary opinion, which was contained in the communication under Article 15(1) RPBA, the Board expressed its intention not to allow the main request but to remit the case to the opposition division with the order to maintain the patent on the basis of the claims of the first auxiliary request. With letter dated 31 July 2025, the appellant withdrew their main request, withdrew their request for oral proceedings and requested a written decision from the Board in view of the requests on file. The respondent did not file a request for oral proceedings and, with letter of 29 August 2025, stated that they did not intend to participate in the oral proceedings.

Under these circumstances, the Board may dispense with oral proceedings if no other reason makes it necessary or desirable to hold them. In the case at hand, there is no such reason because the Board has decided to remit the case to the opposition division with the

order to maintain the patent on the basis of the claims of the first auxiliary request, in line with the appellant's current main request, and because the respondent announced that they would not be attending the oral proceedings.

Moreover, the case is ready for decision on the basis of the parties' written submissions, which have been fully taken into account by the Board (Articles 12(8) and 15(3) RPBA). Therefore, the Board has decided not to hold oral proceedings and to issue the decision in writing.

First auxiliary request

2. Rule 139 EPC

2.1 During the opposition proceedings, the patent proprietor had requested that the chemical name "di-n-dioctyl ammonium chloride" present in claim 1 as granted be corrected to "di-n-dioctyl dimethyl ammonium chloride" (see wording of claim 1 of the former main request under point II. of the present decision). However, the opposition division found that this correction did not comply with the requirements of Rule 139 EPC, as the proposed chemical name "di-n-dioctyl dimethyl ammonium chloride" was also incorrect (see the contested decision, point 2.3 of the reasons).

2.2 The appellant addressed this finding by filing the first auxiliary request wherein the incorrect chemical name "di-n-dioctyl ammonium chloride" was replaced by "di-n-octyl dimethyl ammonium chloride". According to the appellant, this amendment was the correction of an obvious error in compliance with the requirements of

Rule 139 EPC (statement of grounds of appeal, page 5, point 3).

2.3 For a correction to the description, claims or drawings to be allowable under Rule 139, second sentence, EPC, the Boards apply a two-step approach (see also Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, II.E.4.2). It must be established

- (i) that it is obvious that an error is in fact present in the document filed with the EPO, the incorrect information having to be objectively recognisable by the skilled person using common general knowledge (G 3/89, OJ 1993, 117 and G 11/91, OJ 1993, 125, point 5 of the Reasons), and
- (ii) that the correction of the error is obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction (G 3/89 and G 11/91, point 6 of the Reasons).

2.4 In the present case, the Board considers that the skilled person is in no doubt that the chemical name "di-n-dioctyl ammonium chloride" present in claim 1 as granted is not correct since the term "di-n-dioctyl" does not correspond to known alkyl substituents. While "dioctyl" in itself would indicate two octyl groups as substituent, "di-n-dioctyl" is not understandable in view of the double "di". In addition, even if the superfluous second "di" were to be deleted, the compound would still not be correct, as it does not correspond to a quaternary ammonium compound as required by the claim. In view of this, there is an

obvious error in granted claim 1, so that the first criterion for allowance of a correction is met.

2.5 As to the second criterion, not only the chemical name "di-n-octyl dimethyl ammonium chloride" is now correct, but it is also immediately evident *inter alia* from paragraph [0049] of the opposed patent or page 13, lines 15 to 22 of the application as filed (which disclose the alternative biocidal compounds used in the invention as well as the specific combination of four compounds in specific quantities) that nothing else would have been intended than what is offered as the correction. It is specifically noted that what is proposed for correction exactly corresponds to the compound on page 8, line 17 of the opposed patent and page 13, line 22 of the original application with the deletion of the superfluous "di". In this respect, the Board does not see that any other possibility for a correction could be envisaged by the skilled person reading the patent, nor did the opposition division indicate any. Therefore, also the proposed correction is obvious and complies with the requirements of Rule 139 and Article 123(2) EPC.

3. As the Board considers that the positive conclusion of the opposition division under inventive step (see point 6 of the decision) would apply *mutatis mutandis* to claim 1 of the first auxiliary request and no further objections were raised by the respondent in appeal, there are no further issues to be decided upon and the patent is to be maintained on the basis of the claims of the first auxiliary request.

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 on the basis of the claims of the first auxiliary request filed with the statement of grounds of appeal and a description to be adapted if necessary.

The Registrar:

The Chairman:



D. Hampe

D. Semino

Decision electronically authenticated