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Datasheet for the decision of 2 April 2026

Case Number: T 0402/24 - 3.3.05

Application Number: 17161464.7

Publication Number: 3375856

IPC: C11D3/00, C11D3/50, C11D1/62, C11D3/22, C11D3/37, C11D17/00

Language of the proceedings: EN

Title of invention:
FABRIC SOFTENER COMPOSITION COMPRISING ENCAPSULATED BENEFIT AGENT

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Cabinet Beau de Loménie

Headword:
Fabric Softener/Procter & Gamble

Relevant legal provisions:
EPC Art. 54(3), 56, 83, 123(2)

Keyword:
Novelty - (yes)
Inventive step - (yes)
Sufficiency of disclosure - (yes)
Amendments - allowable (yes)

Decisions cited:
G 0002/88, G 0006/88

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

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Case Number: T 0402/24 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 2 April 2026

Appellant: (Opponent)	Cabinet Beau de Loménie 158 Rue de l'Université 75340 Paris Cedex 07 (FR)
Respondent: (Patent Proprietor)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	Gill Jennings & Every LLP The Broadgate Tower 20 Primrose Street London EC2A 2ES (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 16 January 2024 concerning maintenance of the European Patent No. 3375856 in amended form.**

Composition of the Board:

Chairman	R. Winkelhofer
Members:	R. Elsässer
	T. Burkhardt

Summary of Facts and Submissions

I. The opponent's (appellant's) appeal is directed against the decision of the opposition division to maintain the patent in amended form, based on the main request submitted with the reply to the opposition.

II. The opposition division based its decision, *inter alia*, on the following documents:

D1 EP 2 824 169 A1
D3 EP 2 620 211 A2
D4 EP 3 339 408 A1
D6 EP 3 339 411 A1
D8 US 2015/0159119 A1
D10 US 2011/0269658 A1
D13 US 2014/0338134 A1
D16 Appendix A - Experimental report

III. The opposition division held, *inter alia*, that
- claim 1 of the main request met the requirements of Article 123(2) EPC,
- the invention was sufficiently disclosed,
- the claimed subject-matter was novel over D4 and D6, and
- the claimed subject-matter involved an inventive step over D8, when taking into account D16, D3 and D13, and over D10, when taking into account D1.

IV. In their appeal against this decision, the appellant essentially argued that
- claim 1 of the main request contained added subject-matter (Article 123(2) EPC);
- the invention was insufficiently disclosed;
- the claimed subject-matter lacked novelty over D4 and D6; and

- the claimed subject-matter lacked inventive step over D8, when taking into account D16, D3 and D13, and over D10, when taking into account D1.

V. To support their case, the appellant further filed the following documents:

D19: Wikipedia extract on Cellulose
D20: Declaration from Dr. Hans-Georg BRENDLE, technical expert from J. RETTENMAIER & SÖHNE GmbH & Co KG, dated 26 March 2024
D21: "Sustainable Cellulose Fibers For Wrinkle Filling, Soft Focus and Blurring", extract from J. RETTENMAIER & SÖHNE website
D22: K. Soppa et al., "Can cellulose beads save 'The Circling of the Planets'?", poster presented on Conference on Modern Oil Paints, Rijksmuseum, Amsterdam, May 2018

VI. The patent proprietor (respondent) refuted the objections and filed, *inter alia*, the following new documents:

D23: "Microfibrillated cellulose and new nanocomposite materials: a review", I. Sirô et al., Cellulose (2010) 17:459-494
D24: Declaration of Susana Fernández Prieto dated 20 September 2024

VII. Having received the preliminary opinion of the board, the appellant withdrew their initial request for oral proceedings, and stated that no further submissions would be made.

VIII. Independent claims 1, 13 and 14 of the main request as found allowable by the opposition division read as

follows (changes in comparison to claims 1, 14 and 15 as filed are highlighted):

"1. A liquid fabric softener composition, comprising
- a quaternary ammonium ester softening active;
- cellulose fibers wherein the cellulose fiber is present at a level of from 0.01% to 5 % by weight of the composition, wherein the cellulose fiber is microfibrous cellulose derived from wood or jute; and
- from 0.05% to 10 % by weight of the composition of benefit agent capsules comprising a core and a shell encapsulating said core, wherein said shell comprises polyacrylate polymer wherein said shell comprises from 50% to 100% of said polyacrylate polymer, wherein said polyacrylate comprises a polyacrylate cross linked polymer."

"13. A method of treating a fabric, said method comprising
a) optionally washing, rinsing and/or drying said fabric;
b) contacting said fabric with a liquid fabric softener composition according to any of Claims 1 through 12 ~~13~~; and
c) optionally drying said fabric wherein said drying steps comprise active drying and/or passive drying."

"14. Use of cellulose fibers in a liquid fabric softener composition according to any of claims 1-12 ~~13~~ for improving the release of encapsulated benefit agent on fabrics."

Claim 1 of the main request differs from the granted claim 1 in that the last feature "wherein said polyacrylate comprises a polyacrylate cross linked

polymer" is no longer optional.

Dependent claims 2 to 12 relate to preferred embodiments.

IX. The appellant requests that the decision under appeal be set aside and amended such that the patent is revoked.

The respondent requests that the appeal be dismissed, or that the patent be maintained based on one of auxiliary requests 1-9, filed during the first-instance proceedings.

Reasons for the Decision

1. Decision in written proceedings

The decision can be taken in written proceedings since the appellant has withdrawn their request for oral proceedings.

The appeal is to be dismissed.

2. In the communication pursuant to Article 15(1) RPBA, the board set out their preliminary opinion, giving reasons why the appeal was to be dismissed. Since this conclusion was not contested by the appellant which, to the contrary, explicitly announced that they would not be making any further submissions, and in the absence of other reasons to deviate from this preliminary opinion, it is reproduced essentially unchanged in the following.

3. Main request - Article 123(2) EPC

3.1 The appellant did not dispute that the individual features of claim 1 were disclosed in the application as filed. However, they argued that the skilled person was presented with new information since the individual amendments were disclosed on various different levels of preference in the application as filed and there was no pointer towards the claimed combination.

3.2 These arguments are not convincing. Rather, the opposition division correctly found that the subject-matter of claim 1 is supported by claims 1, 4, 5, 7 and 8 as filed.

Each of these claims refers back to any preceding claim and so, under the present circumstances, no additional pointer is needed for the skilled reader to realise that the features recited in said claims can be combined, even if some of the claims disclose converging alternatives, i.e. less-preferred broader and more-preferred narrower ranges.

The skilled person reading claim 1 of the main request is not presented with new technical information, i.e. with information that the application as filed did not disclose.

Claim 1 as filed is directed to a composition comprising three components in generalised form. In claim 1 of the main request, these components are merely more narrowly defined, in accordance with the disclosure of the dependent claims as filed. For instance, the features "cellulose fibers" and "shell material" have been limited to the corresponding most-preferred options disclosed in the claims, namely

microfibrous cellulose derived from wood or jute (claim 5 as filed) and "comprises cross linked polyacrylate" (claim 8 as filed). These amendments do not present the skilled person with new information.

Likewise, various amounts disclosed in claims 4, 7 and 8 as filed have been added to claim 1 as filed, the broadest range being selected in each case.

No subject-matter has been added by these amendments either.

4. Main request - novelty

4.1 There is no reason to depart from the opposition division's finding that neither D4 nor D6 discloses the subject-matter of claim 1 (both documents being state of the art within the meaning of Article 54(3) EPC), since there is no explicit disclosure of a shell material comprising 50% or more of a cross-linked polyacrylate polymer.

4.2 The appellant referred to paragraph [0046] of D4, which however does not explicitly disclose that the acrylates obtained from the monomers mentioned therein are necessarily cross-linked.

4.3 In this context it is telling that D4 explicitly mentions cross-linking for other materials in paragraphs [0045] and [0047], but not for acrylates. The appellant's argument to the contrary that the monomers of D4 would necessarily cross-link due to the formation of bonds between the amine and the acrylate is not supported by any evidence.

4.4 The appellant further argued that the monomers of paragraph [0046] of D4 were also disclosed in paragraph [0048] of the current patent, but this argument is likewise not convincing in view of the fact that the application as filed disclosed the feature "cross linked" as preferred but optional, clearly implying that not all the acrylic monomers disclosed in the patent are necessarily cross-linking. Moreover, even a cross-linked polymer can comprise cross-linking and non-cross-linking monomers, so it cannot be concluded from the fact that a monomer is disclosed in the patent that this monomer is necessarily cross-linking. Therefore it is irrelevant whether certain monomers disclosed in the patent are also disclosed in D4.

4.5 Finally, in addition to the monomers also disclosed in D4, the patent explicitly mentions multifunctional acrylates, such as the hexafunctional acrylate used in the example ("CN975", see D11), which indisputably lead to cross-linked polymers and which are not disclosed in D4.

4.6 To conclude, the feature "cross linked polyacrylate" is not directly and unambiguously disclosed in D4. In view of the above, the subject-matter of claim 1 is novel over this document.

4.7 The same applies to the similar document D6.

5. Main request - inventive step

The invention concerns fabric softener compositions comprising benefit agents, such as perfumes, which are to be deposited onto the fabrics.

5.1 D8 is directed to similar subject-matter, and it is undisputed that this document represents a suitable starting point for assessing inventive step. It is also undisputed that the subject-matter of claim 1 differs from the disclosure of D8 only by the type of shell material, since the capsules disclosed therein do not comprise any cross-linked polyacrylate polymers, in particular not more than 50% thereof.

5.1.1 The patent aims at providing similar release characteristics across different fabric types. In other words, a benefit agent, such as a perfume, should be released in equal amounts from the treated laundry items, regardless of their fabrics (paragraph [0007]).

5.1.2 The patent proposes to solve this problem by the provision of a composition of claim 1, characterised by a shell material comprising at least 50% of cross-linked polyacrylate polymers.

5.1.3 The examples of the patent show that the problem is successfully solved. Example 4 shows that cotton and polyester fabrics treated with a composition according to the invention, namely a composition including capsules having shells comprising cross-linked polyacrylates and microfibrous cellulose (see footnotes (e) and (g) of table 1), have equal headspace ratios or, in other words, the fabrics release similar amounts of perfume after the treatment, regardless of the type of fabric.

5.1.4 In contrast, example 3, in which conventional melamine capsules are used and which can therefore be taken to represent the disclosure of D8 (footnote (d)), does not achieve equal headspace ratios, which means that polyester fabrics release more perfume than cotton

fabrics, which is not desirable.

5.1.5 Thus there is no reason to reformulate the problem described in paragraph [0007] of the patent, namely the provision of a liquid fabric softener composition which provides uniform deposition of encapsulated benefit agents across different fabric types, as was suggested by the appellant.

5.1.6 The appellant argued that the experimental evidence reported in D16 showed that the effect relied upon by the respondent (and the opposition division) did not occur over the entire range claimed, so the problem to be solved had to be seen as the provision of an alternative liquid fabric softener composition.

5.1.7 For this argument to be successful, D16 would have to show that compositions according to claim 1 exist which do not achieve the effect mentioned above.

However, D16 is unsuitable for this purpose since - as correctly pointed out by the opposition division and reiterated by the respondent - the compositions tested therein are not representative of the invention as they do not contain a microfibrous cellulose as claimed. The compositions contain VIVAPUR® CS4FM, which, however, is not a microfibrous but a microcrystalline cellulose.

The terms microfibrous cellulose (or microfibrillated cellulose (MFC)) on the one hand and microcrystalline cellulose on the other hand have well-defined meanings in the art.

MFC is obtained by mechanically separating the cellulose microfibrils which are present in agglomerated form in wood or plants from each other.

Thus MFC has a specific fibrous structure which sets it apart from other types of cellulose.

This is confirmed by D24 and D23. In contrast, microcrystalline cellulose is obtained by a different process which results in a different structure, as also laid out in D24.

5.1.8 The appellant submitted documents D19-D22 to show, to the contrary, that VIVAPUR® CS4FM was a microfibrous cellulose in the sense of the claim. However, this documentary evidence is not convincing. Therefore the issue of admission and consideration of these documents can be left undecided.

D19 is an extract from Wikipedia that merely confirms the common general knowledge that cellulose per se, as found in the cell walls of plants, is in the form of microfibrils incorporated in a polysaccharide matrix. However, the appellant did not explain, nor is it apparent, how this finding could prove that VIVAPUR® CS4FM could be considered by the skilled person to be microfibrous cellulose in the commonly understood sense of the term.

D20 is a statement of an employee of the manufacturer of VIVAPUR® CS4FM which explicitly refers to the product as microcrystalline but not as microfibrous. The same is true for the brochure D21.

Finally, Figure 6c of D22 discloses a picture of VIVAPUR® CS4FM together with a particle-size distribution diagram. It is likewise not apparent why or how this evidence could show that the product is a microfibrous cellulose in the common sense of the term

set out above.

5.1.9 To conclude, the appellant's allegation that the skilled reader would read the term "microfibrous cellulose" as encompassing a microcrystalline cellulose like VIVAPUR® CS4FM is not supported by any evidence. The compositions tested in D16 are thus not compositions according to the invention. Therefore they are unsuitable to prove that the effect relied upon by the respondent and demonstrated by the experiments in the patent is not present over the entire scope of the claim.

5.1.10 It follows that there is no reason to formulate the problem to be solved in a less ambitious way, as proposed by the appellant, namely as the provision of an alternative softener composition.

5.1.11 The appellant, having based their conclusions and objections on an incorrect premise, has not provided any arguments as to why, starting from D8, it would be obvious for the skilled person to solve the more ambitious problem (see point 5.1.5) by the provision of capsules having shells comprising more than 50% of a cross-linked polyacrylate polymer. In particular, they have not argued that D3 and D13 would suggest doing so.

The opposition division thus correctly found that the subject-matter of claim 1 is not rendered obvious by D8.

5.2 Similar arguments apply if D10 is selected as closest prior art. The parties agree that the claimed subject-matter is distinguished over example 33 of D10 in that the latter does not disclose a composition that

comprises microfibrous cellulose.

5.2.1 The respondent has convincingly demonstrated that example 4 of the patent shows the achievement of a more uniform deposition of benefit agents across different fabric types in comparison with a composition that does not contain microfibrous cellulose.

For the same reasons as set out above, D16 is unsuitable as counter-evidence in this regard.

5.2.2 Since the prior art, in particular D1, does not teach that a (more) uniform deposition of benefit agent can be obtained when microfibrous cellulose is added to the composition in the claimed amount, the subject-matter of claim 1 is not obvious when starting from D10.

5.3 In view of the composition of claim 1 not being obvious, the subject-matter of independent claims 13 and 14, which both employ the composition of claim 1, is non-obvious as well. The same applies to dependent claims 2 to 12.

6. Main request - Article 83 EPC

The appellant's objections concern the invention as defined in claims 1, 5 and 14. However, they are likewise without merit.

6.1 Claim 1 defines a liquid fabric softener composition comprising (at least) three components. Since the invention as defined in claim 1 does not mention a specific effect or property that the claimed composition must have, the reference to test report D16, which allegedly showed that not all types of microfibrous cellulose lead to an improvement in the

release behaviour, is irrelevant. Moreover, as set out above, the compositions of D16 are not embodiments of the invention.

6.2 The invention can be carried out if the skilled person can make or obtain the claimed composition, which requires only mixing three conventional components. It is not apparent why the skilled person should not be enabled to do so.

6.3 Similar considerations apply to claim 5. The feature "average fiber diameter", which is at the core of the appellant's objection, is a well-known parameter which is entirely conventional, in particular in connection with the characterisation of natural fibres which, unlike most synthetic fibres, do not have pre-defined uniform fibre diameters.

For the reasons given by the appellant, such as the absence of a measurement method, the feature might be considered unclear, but such lack of clarity would not be caused by an amendment, and so could not be objected to in these opposition-appeal proceedings.

Moreover, the parameter can be measured, for instance using the method disclosed in paragraphs [0100]-[0104] of the patent, so the skilled person can select suitable fibres in order to carry out the invention as defined in claim 5.

6.4 Unlike claim 1, claim 14 is a claim directed to the use of cellulose fibers for a particular purpose which is based on a technical effect.

According to G 2/88 and G 6/88, such a claim is to be interpreted as including the technical effect as a

functional technical feature. In the case at hand, this means that the invention as defined in this claim is only sufficiently disclosed if there is evidence for the effect that cellulose fibres improve the release of encapsulated benefit agent on fabrics, in the context of a composition according to claims 1-12.

6.4.1 The appellant pointed out that the effect mentioned in paragraphs [0004] and [0007] of the patent (and shown in the examples, see above), namely "providing similar release of encapsulated benefit agent across different types of fabrics" is different from the effect specified in claim 14, namely "improving the release of encapsulated benefit agent across different types of fabrics".

6.4.2 While this is factually correct, it does not lead to the invention as defined in claim 14 being insufficiently disclosed, since the provision of similar release characteristics across different fabrics can be seen as an improvement in the release behaviour of a benefit agent. There are many ways to improve the release behaviour, and providing a similar release across different fabrics is one of them.

6.4.3 Finally, the appellant pointed out that claim 14 was directed to the use of "cellulose fibers" in general and not to the use of microfibrous cellulose, derived from wood or jute, as mentioned in claim 1.

Since test report D16 showed that the effect was not obtained with just any type of cellulose fibres, the invention could not be carried out in view thereof as well.

6.4.4 This argument is not convincing either. First, the respondent's argument that the skilled reader would understand that the cellulose fibers being the subject of use claim 14 are the ones that are already contained in the composition of claims 1-12, i.e. microfibrous cellulose fibers, is persuasive.

6.4.5 Moreover, even if this was not the case, any use of "cellulose fibers" in the context of the compositions of claims 1-12 is necessarily one that also employs microfibrous cellulose for which the effect has been shown, see above.

Even if the cellulose fibers that are used in the compositions do not only comprise the microfibrous cellulose fibers defined in claim 1 but also a further type of cellulose that has no impact on the release behaviour, such as the cellulose tested in D16, there is no evidence on file that using this mixture of cellulose fibers would not show the claimed effect of improving the release behaviour.

7. Since none of the appellant's objections are convincing, the appeal cannot succeed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

D. Grundner R. Winkelhofer

Decision electronically authenticated