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**Datasheet for the decision  
of 13 April 2026**

**Case Number:** T 0854/24 - 3.3.02

**Application Number:** 15781614.1

**Publication Number:** 3206487

**IPC:** A01N31/02, A01N37/02,  
A01N25/30, A01P1/00, A61P31/02,  
A61P31/12

**Language of the proceedings:** EN

**Title of invention:**  
USE OF FATTY ACID ESTER FOR IMPROVING THE ANTIMICROBIAL  
EFFICACY OF AN ALCOHOLIC DISINFECTANT

**Patent Proprietor:**  
Schülke & Mayr GmbH

**Opponent:**  
Bode Chemie GmbH & Co.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 100(c), 123(2)

**Keyword:**

Grounds for opposition - added subject-matter  
Amendments

**Decisions cited:**

G 0002/10

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 0854/24 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 13 April 2026**

**Appellant I:** Schülke & Mayr GmbH  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted/  
electronically transmitted on 24 April 2024  
concerning maintenance of the European Patent  
No. 3206487 in amended form.**

**Composition of the Board:**

**Chairwoman** M. Blasi  
**Members:** S. Bertrand  
A. Lenzen

## **Summary of Facts and Submissions**

- I. The appeals by the patent proprietor (appellant 1) and the opponent (appellant 2) are directed against the opposition division's interlocutory decision finding that European patent No. 3 206 487, as amended in the form of auxiliary request 3, comprising the set of claims filed on 14 March 2024 during the oral proceedings, met the requirements of the EPC.
- II. The patent concerns an alcoholic disinfectant comprising ethanol and isopropyl myristate in specific amounts.
- III. The impugned decision is based on the set of claims of a main request (patent as granted) and auxiliary requests 1 to 3. In the impugned decision, the opposition division concluded, *inter alia*, that the subject-matter of the claims of the main request and auxiliary requests 1 to 3 did not extend beyond the content of the application as filed.
- IV. On appeal, appellant 1 filed the sets of claims of auxiliary requests 1, 2 and 4 to 13 (with its statement of grounds of appeal) as well as the sets of claims of auxiliary requests 14 to 18 (with its reply to appellant 1's grounds of appeal). In their respective statements of grounds of appeal and their replies, both parties provided arguments regarding the allowability of the pending requests.
- V. The board summoned the parties to oral proceedings in accordance with their requests and issued a communication pursuant to Article 15(1) RPBA.

VI. By letter of 12 March 2026, appellant 1 informed the board that it would not attend the oral proceedings and maintained all its requests.

VII. The oral proceedings were subsequently cancelled.

VIII. The parties' requests relevant to the present decision are as follows.

Appellant 1 requests:

- that the decision under appeal be set aside and that the opposition be rejected, i.e. the patent be maintained as granted (main request)
- alternatively, that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of one of the claim sets of auxiliary requests 1 and 2 filed with the statement of grounds of appeal
- further alternatively, that appellant 2's appeal be dismissed, implying that the opposition division's interlocutory decision be upheld and the patent be maintained in the form as held allowable by the opposition division, or
- that the patent be maintained in amended form based on one of the claim sets of auxiliary requests 4 to 13 filed with the statement of grounds of appeal and auxiliary requests 14 to 18 filed with the reply to the grounds of appeal

Appellant 2 requests that the disputed decision be set aside and that the opposed patent be revoked in its entirety.

## Reasons for the Decision

Main request

1. Added subject-matter - claim 1 - Article 100(c) EPC

1.1 Claim 1 of the main request reads as follows:

*"1. Alcoholic disinfectant, comprising*

- a) ~~at least 78 wt%~~ **81.5 to 92.5 wt%** ethanol,*  
*relative to the weight of the disinfectant, and*
- b) ~~one or more fatty acid esters of monovalent C<sub>1</sub>~~  
~~to C<sub>6</sub> alkyl alcohol~~ **0.3 to 2.0 wt% of isopropyl**  
**myristate,***

*wherein the disinfectant*

- i. comprises less than 0.1 wt% glycerin, relative*  
*to the weight of the disinfectant, and*
- ii. comprises less than 5.0 wt% perfume, relative*  
*to the weight of the disinfectant,*

***the disinfectant comprising 0.05 to 5.0 wt% ingredients other than water and ingredients a) and b)***" (Emphasis added by the board; strike through and bold text representing deletion and addition respectively compared to claim 1 as filed.)

The ingredients other than water and ingredients a) and b) of claim 1 of the main request are referred to as other ingredients in the following.

1.2 Appellant 2 argued that the application as filed did not provide a basis for the alcoholic disinfectant defined in claim 1 of the main request. In its view, the amounts of ethanol, isopropyl myristate and the other ingredients recited in claim 1 were selected at

different levels of preference. The resulting combination of features was therefore not directly and unambiguously derivable from the application as filed.

1.3 Appellant 1 submitted that, as held by the opposition division, claim 1 of the main request found its basis in claims 1, 3, 6 and 7 as filed together with the passage on page 9, lines 20 to 23, of the application as filed. It further argued that example 2 constituted a pointer towards combining the amount ranges of ethanol, isopropyl myristate and the other ingredients as now claimed.

1.4 The board notes the following.

Claims 3, 6 and 7 as filed and the passage on page 9, lines 20 to 23, of the application as filed disclose the following (references are to the published application, as submitted by the parties; bold type added by the board):

- Claim 3: "*3. Disinfectant according to Claim 1 or 2, characterized in that it comprises at least 78.5 wt% ethanol, preferably comprises at most 98 wt% ethanol, preferably at most 97 wt%, more preferably 79.0 to 96 wt%, especially 79.5 to 95 wt%, such as 80 to 94 wt%, for example 81 to 93 wt% and especially **81.5 to 92.5 wt%** ethanol, in each case relative to the weight of the disinfectant"*
- Claim 6: "*6. Disinfectant according to Claim 5, characterized in that component b) is **isopropyl myristate***"
- Claim 7: "*7. Disinfectant according to one of the preceding claims, characterized in that component b) is present in an amount from 0.02 to 5 wt%, relative to the weight of the disinfectant,*

*preferably 0.1 to 4 wt%, more preferably 0.2 to 3 wt%, especially **0.3 to 2.0 wt%**, such as 0.5 to 1.8 wt%, for example 0.6 to 1.6 wt%, such as 0.75 or about 1.4 wt%"*

- Page 9, lines 20 to 23: *"It is preferred that the disinfectant contains, apart from the mandatory components a) and b) , only **0.05 to 5.0 wt%**, preferably 1.0 to 4.0 wt% of further ingredients and water as the remainder"*

The ethanol range 81.5 to 92.5 wt% is disclosed in claim 3 of the application as filed as the most preferred range within a list of converging ranges.

The range 0.3 to 2.0 wt% isopropyl myristate is one of several preferred ranges disclosed in claim 7 as filed, representing an intermediate level of preference.

The range 0.05 to 5.0 wt% for the other ingredients is disclosed on page 9, lines 20 to 23, of the application as filed as the broadest range within a further list of ranges.

Thus, the subject-matter of claim 1 of the main request results from a selection of one range for each of three ingredients (ethanol, isopropyl myristate and other ingredients) from three separate lists of ranges. It combines a most preferred range, an intermediate range and a broadest range. Such a combination constitutes a multiple selection.

In accordance with the gold standard (G 2/10, OJ EPO 2012, 376, point 4.3 of the Reasons) for assessing compliance with Article 123(2) EPC, any amendment to the parts of a European patent application or a European patent relating to the disclosure (the description, claims and drawings) is subject to the

mandatory prohibition on extension laid down in Article 123(2) EPC and can therefore, irrespective of the context of the amendment, only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the application as filed as a whole.

In the case of a multiple selection from lists of ranges, the claimed combination is only allowable if the application as filed provides a direct and unambiguous disclosure of that combination. In the absence of an explicit disclosure, this requires that the application as filed contain a pointer to the claimed combination.

It was not contested that the application as filed did not provide direct and unambiguous disclosure of the claimed combination.

As set out above, appellant 1 relied on example 2 as such a pointer. Example 2 discloses a disinfectant A comprising 90.00 parts by weight ethanol 96% denatured with MEK (corresponding to 83.7 wt% ethanol), 1.40 parts by weight isopropyl myristate, 6.80 parts by weight purified water, 0.80 parts by weight propylene glycol, 0.70 parts by weight cetearyl octanoate and 0.30 parts by weight povidone K.

Thus, example 2 contains 83.7 wt% ethanol and 1.4 wt% isopropyl myristate. It contains no glycerine, no perfume and 1.8 wt% of other ingredients (propylene glycol, cetearyl octanoate and povidone K).

The board acknowledges that the selection of the ethanol range of 81.5 to 92.5 wt% is supported by a

pointer in claim 3 as filed, where this range is identified as the most preferred.

However, as submitted by appellant 2, example 2 cannot serve as a pointer for the selection of the isopropyl myristate range of 0.3 to 2.0 wt%. The single value of 1.4 wt% (isopropyl myristate) disclosed in example 2 falls within all six ranges disclosed in claim 7 as filed (0.02 to 5 wt%, 0.1 to 4 wt%, 0.2 to 3 wt%, 0.3 to 2 wt%, 0.5 to 1.8 wt% and 0.6 to 1.6 wt%). As a consequence, this example does not single out or provide any preference for the range of 0.3 to 2.0 wt% as opposed to the other disclosed ranges.

The same applies to the amount of the other ingredients (1.8 wt%) of example 2, which falls within both the broadest and the more preferred ranges disclosed on page 9, lines 20 to 23, of the application as filed (0.05 to 5 wt% and 1 to 4 wt%). This value therefore does not point to the selection of the broadest range or to any other range.

Hence, example 2 represents the disclosure of a single composition and does not provide any indication towards the selection of the combination of ranges now claimed.

1.5 In the absence of any pointer in the application as filed to the claimed combination resulting from this multiple selection, the board concludes that the subject-matter of claim 1 of the main request is not directly and unambiguously derivable from the application as filed.

1.6 This conclusion was set out by the board in its communication under Article 15(1) RPBA, and no further substantive submissions were made by appellant 1.

- 1.7 It follows that the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted.

Auxiliary requests 1 to 18

2. Added subject-matter - Article 123(2) EPC

2.1 Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the amount range of isopropyl myristate has been further limited to 0.5 to 1.8 wt%. This range is disclosed in an intermediate level of preference, for example, in claim 7 as filed. The amendment does not affect the conclusions reached for the main request. The same reasoning therefore applies *mutatis mutandis*.

2.2 Compared to claim 1 of the main request, claim 1 of auxiliary request 2 limits the amount of isopropyl myristate to 0.6 to 1.6 wt%, corresponding to the narrowest range disclosed in claim 7 as filed. Even if the fact that this is the narrowest range disclosed in the application as filed were considered a pointer towards this range, no pointer has been identified for the further selection of the range of 0.05 to 5.0 wt% for the other ingredients. Non-compliance with Article 123(2) EPC therefore persists.

2.3 Compared to claim 1 of the main request, claim 1 of auxiliary request 3 further limits the amount of the other ingredients to 1.0 to 5.0 wt%. This range results from a combination of endpoints from two different ranges disclosed on page 9, lines 20 to 23, of the application as filed and thus constitutes an additional selection. No pointer to this combination has been identified. The requirements of Article 123(2) EPC are therefore likewise not met.

- 2.4 Compared to claim 1 of the main request, claim 1 of auxiliary request 4 specifies the form of the disinfectant (solution or aqueous-alcoholic gel). This amendment does not affect the assessment of added subject-matter for the main request. The same conclusions therefore apply.
- 2.5 Auxiliary requests 5 and 6 correspond to combinations of auxiliary requests 1 and 4, and auxiliary requests 2 and 4, respectively. The same reasoning as for claim 1 of the main request applies *mutatis mutandis* to claim 1 of auxiliary requests 5 and 6.
- 2.6 Compared to claim 1 of the main request, claim 1 of auxiliary request 7 further requires the presence of 0.02 to 5 wt% myristyl alcohol. This amendment inserts additional multiple selections, namely:
- (i) the selection of fatty alcohols from the optional additional constituents c) to l) disclosed on pages 5 to 9
  - (ii) the selection of myristyl alcohol from the listed fatty alcohols disclosed on page 5, lines 6 to 9
  - (iii) the selection of the amount range 0.02 to 5 wt% from the ranges disclosed on page 5, lines 11 to 15

No pointer to these selections has been identified. Moreover, the amendment does not overcome the issue of added subject-matter in claim 1 of the main request.

- 2.7 Compared to claim 1 of the main request, claim 1 of auxiliary request 8 specifies 0.5 to 1.5 wt% myristyl alcohol. For the same reasons as for auxiliary request 7, no pointer to the required selections has been

identified, and the amendment does not overcome the issue of added subject-matter in respect of claim 1 of the main request. Non-compliance with Article 123(2) EPC therefore persists.

2.8 Auxiliary requests 9 to 11 correspond to combinations of auxiliary requests 1 and 8, auxiliary requests 2 and 8, and auxiliary requests 6 and 8, respectively. The same considerations as provided for claim 1 of the main request and claim 1 of auxiliary request 8 apply *mutatis mutandis* to claim 1 of auxiliary requests 9 to 11.

2.9 Compared to claim 1 of auxiliary request 10, claim 1 of auxiliary request 12 further requires 0.3 to 1.0 wt% of a chlorhexidine derivative. This amendment likewise results from a selection from the list of optional constituents. No pointer to this selection has been identified. Moreover, the amendment does not overcome the issue of added subject-matter in claim 1 of the main request.

2.10 Auxiliary request 13 corresponds to a combination of auxiliary requests 4 and 12. The same considerations as for the main request and auxiliary request 12 apply.

2.11 Auxiliary request 14 is a combination of auxiliary requests 3 and 6.

Auxiliary request 15 is a combination of auxiliary requests 3 and 10.

Auxiliary request 16 is a combination of auxiliary requests 3 and 11.

Auxiliary request 17 is a combination of auxiliary requests 3 and 12.

Auxiliary request 18 is a combination of auxiliary requests 3 and 13.

Since the underlying deficiencies of added subject-matter are not remedied by these combinations, the same conclusions apply *mutatis mutandis*.

2.12 Auxiliary requests 1 to 18 are not allowable.

2.13 This conclusion was set out by the board in its communication under Article 15(1) RPBA, and no further substantive submissions were made by appellant 1.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



U. Bultmann

M. Blasi

Decision electronically authenticated