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**Datasheet for the decision
of 5 August 2025**

Case Number: T 1054/24 - 3.3.06

Application Number: 17768924.7

Publication Number: 3510132

IPC: C11D3/04, C11D17/00

Language of the proceedings: EN

Title of invention:

SOLID DETERGENT COMPOSITIONS AND METHODS OF ADJUSTING THE
DISPENSE RATE OF SOLID DETERGENTS USING SOLID ANIONIC
SURFACTANTS

Applicant:

Ecolab USA Inc.

Headword:

Ecolab/Dispense Rate

Relevant legal provisions:

EPC Art. 84, 123(2)
RPBA 2020 Art. 13(2)

Keyword:

Claims - unclear characterisation by parameters
Amendments - correction of errors (no)
Amendment after summons - taken into account (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1054/24 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 5 August 2025

Appellant: Ecolab USA Inc.
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Representative: Godemeyer Blum Lenze Patentanwälte
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 7 March 2024
refusing European patent application No.
17768924.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: R. Elsässer
C. Heath

Summary of Facts and Submissions

- I. The appeal was directed against the decision of the examining division to refuse the application *inter alia* because the main and first to third auxiliary requests did not meet the clarity requirement of Article 84 EPC.
- II. With the grounds of appeal, the appellant contested the decision and filed a main request and six auxiliary requests, whereby the main request and auxiliary requests 2 and 4 corresponded to the main request and auxiliary requests 2 and 3 filed at first instance, respectively. Auxiliary request 1 filed at first instance was abandoned.
- III. The preliminary opinion of the board took the position that claim 1 of the main and first to fifth auxiliary requests was unclear and that claim 1 of auxiliary request 6 did not meet the requirements of Article 123(2) EPC. After receipt of this opinion, the appellant with submission dated 2 June 2025 filed new auxiliary requests 2 and 8 and re-numbered the auxiliary requests already on file as auxiliary requests 1 and 3-7. Further, they argued that the main and auxiliary requests 1 to 6 met the clarity requirement of Article 84 EPC and that auxiliary requests 7-8 met the requirement of Article 123(2) EPC.
- IV. At the oral proceedings held on 5 August 2025, the appellant filed an additional auxiliary request 9. Appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request, or alternatively, of one of auxiliary requests 1-8 filed

with letter dated 2 June 2025, or of auxiliary request 9 filed at the oral proceedings.

Reasons for the Decision

1. Main request - clarity

1.1 Claim 1 of this request reads as follows:

*"1. A solid detergent block composition comprising:
(a) a first solid comprising a solid anionic surfactant, and
(b) a second solid comprising an alkaline source, wherein the alkaline source comprises one or more alkaline compounds, wherein the first solid and the second solid are mixed and pressed to produce a solid block, and wherein the dispense rate of the solid block is 20 to 120 g/per cycle, wherein the dispense rate is measured by a spray type dispenser using a 60 second dispense period and water with a pressure of from 1.378 bar (20 psi) to 3.445 bar (50 psi) and a temperature of from 32.2 to 60°C (90 F to 140 F)".*

1.2 The above claim does not meet the requirement of Article 84 EPC because the subject-matter for which protection is sought is not clearly defined.

1.2.1 The claim defines the solid block inter alia by its dispense rate and thus by a parameter. It follows from established jurisprudence that, if claimed subject-matter is wholly or partially defined by a parameter, a method for measuring the latter must be indicated, if possible in the claim itself, so as to allow the skilled person to unambiguously verify whether they are working inside or outside the scope of the claim (Case

Law of the Boards of Appeal, 11th edition, II.A.3.6).

1.2.2 As set out under point 4.1-4.4 of the decision under appeal, the dispense rate depends on several factors not all of which are defined in the claim. In particular the flow rate, i.e. the amount of water sprayed per time unit onto the detergent block, remains undefined.

In this regard the appellant confirmed (see letter of 2 June 2025, page 5, last three paragraphs) that for any given block the dispense rate could be adjusted by varying the flow rate.

1.2.3 It follows that with the dispense rate being dependent on the flow rate, a given block may thus have a dispense rate outside the claimed range if tested with a certain flow rate, but within the claimed range if tested with another (higher or lower) flow rate. Thus, the subject-matter for which protection is sought is not clearly defined.

1.2.4 This lack of clarity is further aggravated by the fact that the flow rate is not the only undefined factor having an impact on the dispense rate. For instance, the quality of the water used and the shape and size of the block also play a role, see page 19, lines 1-5 and page 52, lines 27-29 of the description. Since these factors are also not defined in the claim, the skilled person cannot be sure whether a tested block for which a dispense rate outside of the claimed range has been measured might nevertheless be covered by the claim should the testing conditions be varied based on parameters not specified in the claim.

- 1.2.5 In the statement of grounds, the appellant argued that the examining division merely objected to the breadth of the claim, while broad claims were not necessarily unclear.

The board observes that the latter finding is factually correct, but the appellant misconstrued the objection of the examining division (which in essence corresponds to the objection set out above) that is definitely not directed towards the breadth of the claim, but on the finding that the method indicated in the claim does not allow to reliably and unambiguously determine the dispense rate, which is a valid objection of lack of clarity under Article 84 EPC.

- 1.2.6 In the submission of 2 June 2025, the appellant argued that the skilled person would be capable of implementing the claimed dispense rate since it knew how it could be adjusted, namely by varying the necessary settings, such as the flow rate.

However, in the board's view, this statement does not address the objection under Article 84 EPC mentioned above, which is not based on the premise that the skilled person would not be capable of arriving at the claimed dispense rate, but on the fact that the method defined in the claim does not clearly allow to determine whether one works within or outside the claimed scope.

In the same context, the appellant's statement that, according to EPO practice and case law, a claim is sufficiently clear if the skilled person can carry out the invention and measure the claimed parameter without undue burden, is not correct. It is not sufficient that a claimed parameter can be measured without undue

burden. Rather, measuring the parameter must allow an unambiguous distinction between subject-matter covered or not covered by the claim. In the present case, this condition is not met for the reasons set out above, so that claim 1 lacks clarity (Article 84 EPC).

2. Auxiliary requests 1-6

Claim 1 of each of these requests is not allowable for the same reasons as those given for the main request, since none of the respective amendments addresses the objection set out above.

3. Auxiliary request 7

This request is not allowable since it does not meet the requirement of Article 123(2) EPC for the following reasons:

3.1 Claim 1 (emphasis added) reads as follows:

"1. A method of adjusting the dispense rate of solid detergent composition, the method comprising the steps of:

(a) mixing a first solid comprising a solid anionic surfactant, wherein the concentration of the anionic surfactant is modified to adjust the dispense rate of the solid detergent composition and a second solid in form of a solid detergent composition comprising an alkaline source to obtain a solid mixture, and

(b) pressing the solid mixture by a solid pressing process to form a solid block, wherein the alkaline source comprises one or more alkaline compounds, and wherein the adjusting of the dispense rate provides an essentially same dispense rate as an existing solid detergent composition, wherein the existing solid

detergent composition has an essentially similar composition, dimension and shape as the adjusted solid detergent composition, and wherein the dispense rate of the existing solid detergent block and the adjusted solid detergent composition are measured by the same procedure, conditions, and equipment."

- 3.2 According to the appellant, the subject-matter of this amended claim is based on claims 10 and 11 as filed (emphasis added) which read as follows:

"10. A method of adjusting dispense rate of an existing solid detergent composition comprising: mixing a first solid comprising a solid anionic surfactant and a second solid comprising an alkaline source to obtain a solid mixture, and pressing the solid mixture to form a solid block, wherein the alkaline source comprises one or more alkaline compounds, and wherein the concentration of the anionic surfactant is modified to adjust the dispense rate of the solid detergent composition."

"11. The method of claim 10, wherein the adjusting of the dispense rate provides an essentially same dispense rate as an existing solid detergent composition, wherein the existing solid detergent composition has an essentially similar composition, dimension and shape as the second solid, and wherein the dispense rate of the existing solid detergent block and the solid block are measured by the same procedure, conditions, and equipment."

- 3.3 The amendment relevant for this decision is the substitution of the expression "the second solid" (found in above claim 11) with "the adjusted solid detergent composition". For this amendment, there

is however no basis in the application as filed so that it adds subject-matter.

- 3.4 The appellant did not dispute that there was no explicit basis in the application as filed, but argued that the amendment was an allowable correction under Rule 139 EPC. The conditions set out in said rule were met because the skilled reader would have immediately realised that, in the given context, the term "the second solid" did not make sense. After all, the feature of the "second solid" had to be the result or the outcome of the method so that nothing else could have been meant but the "adjusted solid detergent composition".

This argument fails to convince, because even if the embodiment defined by claims 10 and 11 as filed does not make much sense from a technical point of view, it is not immediately evident to the skilled reader of the application as filed that the problem lies in the expression "the second solid". Rather, the whole embodiment is nebulous, as both claims 10 and 11 mention "an existing solid detergent composition" without clearly setting out which composition is meant thereby. Moreover, when claim 11 sets out that "the existing solid detergent composition" has an essentially similar composition, dimension and shape as "the second solid", it is not entirely clear whether this statement (in case they are different) refers to the "existing solid detergent composition" mentioned in claim 10 or claim 11 as filed. Moreover, even if the skilled reader would realise that it is specifically the expression "as the second solid" that is erroneous and needs to be corrected, it is not immediately evident that this should be corrected by the term "the adjusted solid detergent composition", since it could

also be the other way round, namely that the term "the existing solid detergent composition" is wrong and needs to be replaced.

For these reasons, the board has come to the conclusion that, even if the skilled reader might realise that something is wrong in the embodiment defined by claims 10 and 11 as filed, it is not immediately evident that nothing else would have been intended than the correction offered. Therefore, a correction under Rule 139 EPC is not possible. Since there is no direct and unambiguous basis in the application as filed for the proposed amendment, claim 1 at issue infringes the requirement of Article 123(2) EPC.

4. Auxiliary request 8

Claim 1 of this request, which includes the same amendment, is not allowable for the same reasons as those set out regarding claim 1 of auxiliary request 7.

5. Auxiliary request 9

This request was filed at the oral proceedings before the board in order to address the objection under Article 123(2) EPC.

The board however exercised its discretion not to take this request into account (Article 13(2) RPBA) since there were no exceptional circumstances which justified its extremely late filing.

The appellant argued that the request was in fact a direct response to the objections under Article 123(2) EPC raised by the board against auxiliary request 7, which were surprising and could not have been foreseen

by the appellant.

The board remains unconvinced, because the negative assessment for auxiliary request 7 (which corresponds to former auxiliary request 6) merely confirmed the position the board had taken in its preliminary opinion concerning auxiliary request 6 then on file.

The appellant argued that this objection was unspecific so that that they could not have known why the board was of the opinion that the amendment lacked support. While this might be factually correct, the responsibility for the lack of detail in the objection lies with the appellant who had failed to indicate the support for the amendments when filing auxiliary request 6 underlying the preliminary opinion. In particular, the arguments discussed above were presented for the first time with submission of 2 June 2025 after the board had issued its preliminary opinion. The fact that the board could assess these late filed arguments for the first time at the oral proceedings does therefore not amount to exceptional circumstances which would justify the admittance of a new request.

6. Since the main request and auxiliary requests 1-8 are not allowable and auxiliary request 9 is not taken into account, the appeal does not succeed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Wille

J.-M. Schwaller

Decision electronically authenticated