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**Datasheet for the decision
of 12 May 2026**

Case Number: T 1372/24 - 3.3.02

Application Number: 16164574.2

Publication Number: 3228686

IPC: C11D3/33

Language of the proceedings: EN

Title of invention:
AUTOMATIC DISHWASHING

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Henkel AG & Co. KGaA

Relevant legal provisions:
EPC Art. 54, 56
RPBA 2020 Art. 12(4), 12(6)

Keyword:

Novelty - novelty of use - second (or further) non-medical use
- corresponding purpose feature in method claim

Inventive step

Late-filed evidence - should have been submitted in first-
instance proceedings

Amendment to case - complexity of amendment

Decisions cited:

G 0002/88, G 0006/88, T 3191/19, T 1931/14, T 0304/08



Beschwerdekammern

Boards of Appeal

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Case Number: T 1372/24 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 12 May 2026

Appellant: Henkel AG & Co. KGaA
(Opponent) Henkelstrasse 67
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Representative: Henkel AG & Co. KGaA
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Respondent: The Procter & Gamble Company
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 31 October 2024
concerning maintenance of European patent
No. 3228686 in amended form.

Composition of the Board:

Chairman M. Kollmannsberger
Members: A. Lenzen
R. Romandini

Summary of Facts and Submissions

I. The opponent (appellant) lodged an appeal against the opposition division's decision (decision under appeal) that European patent No. 3 228 686 (patent) in amended form meets the requirements of the EPC.

II. Reference is made in the present decision to the following documents filed with the opposition division:

- D1 JP 2000-63894 A
- D2 Potthoff-Karl, B., et al., SÖFW-Journal, 122 (6), 1996, pages 392 to 394, 396 and 397 (Note: With regard to this document and in line with the parties' usage, the page numbers indicated below do not refer to the actual page numbers, but to the page numbers of the PDF document as contained in the electronic file.)
- D4 WO 2014/184280 A1
- D5 WO 97/49792 A1
- D9 Experimental Report dated 29 November 2022 (3 pages)

III. With the statement of grounds of appeal, the appellant filed the following documents:

- D15 Information brochure entitled "*Trilon® M - Biodegradable Chelate*", BASF
- D16 Information brochure entitled "*Home Care - Enabling Choices for Sparkling Glasses and Dishes with Trilon® M and Trilon® Ultimate*", BASF
- D17 Information brochure entitled "*Chelates Product Guide*", AkzoNobel

- IV. The patent proprietor (respondent) filed a reply to the statement of grounds of appeal.
- V. 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 that communication, it summarised the parties' previous substantive submissions and expressed its preliminary opinion on several issues.
- VI. With letters dated 27 February 2026 (appellant) and 17 April 2026 (respondent), the parties filed further substantive submissions.
- VII. Oral proceedings before the board were held by videoconference on 12 May 2026 in the presence of both parties. The appellant stated that it was no longer relying on D15. The board decided not to admit D16 or D17 into the proceedings. At the end of the oral proceedings, the chair announced the order of the present decision.
- VIII. The parties' final substantive requests at the end of the oral proceedings, in so far 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, implying that the decision under appeal be confirmed and that the patent be maintained in the form held allowable by the opposition division (main request).

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

Reasons for the Decision

Main request (patent in amended form as held allowable by the opposition division)

1. The set of claims of the main request comprises two independent claims, method claim 1 and use claim 10. They read as follows:

Claim 1:

"A method of reducing spotting on dishware during automatic dishwashing, the method comprising the step of subjecting the dishware to a wash liquor comprising at least 700 ppm of an aminocarboxylated complexing agent and wherein the liquor is free of phosphate and free of dispersant polymer, and wherein the complexing agent is selected from the group consisting of methyl glycine diacetic acid and its salts."

Claim 10:

"Use of a phosphate-free automatic dishwashing cleaning composition comprising at least 25% by weight of the composition of an aminocarboxylated complexing agent and wherein the composition is free of dispersant polymer for the reduction of spotting on dishware in automatic dishwashing, and wherein the complexing agent is selected from the

group consisting of methyl glycine diacetic acid and salts thereof."

In line with the parties' usage, methyl glycine diacetic acid and its salts are abbreviated in this decision as "MGDA".

The purpose of both the method according to claim 1 and the use according to claim 10 is the same, namely the reduction of spotting on dishware during automatic dishwashing. For the sake of brevity, this purpose is referred to below simply as the reduction of spotting. The corresponding features (claim 1: *"of reducing spotting on dishware during automatic dishwashing"*, claim 10: *"for the reduction of spotting on dishware in automatic dishwashing"*) are referred to below as the "purpose-related features".

2. Novelty (Article 54(1) EPC)

2.1 The appellant argued that the subject-matter of claims 1 and 10 of the main request lacked novelty over D2.

2.2 D2 (see the title) concerns biodegradable complexing agents and their use in products such as dishwashing detergents. Figure 14 discloses the following silicate-free dishwashing detergent ("TAED" is the abbreviation for tetraacetylenethylenediamine, see D2, last page, left-hand column, first paragraph):

sodium citrate · 2 H ₂ O	25/40/50%
sodium carbonate	25%
sodium hydrogen carbonate	9%
sodium perborate · 1 H ₂ O	7%
TAED	2%

C ₁₃ /C ₁₅ (PO) ₄ (EO) ₂ OH	2%
complexing agent	30/15/5%

D2 also states that an embodiment of this dishwashing detergent containing 30 wt.% of MGDA as the complexing agent achieves a very effective inhibition of scale deposition on glass, metal and porcelain after 15 cleaning cycles when used in an automatic dishwasher at a concentration of 4 g/L in the wash liquor (page 3, right-hand column, third-to-last paragraph and penultimate paragraph).

- 2.3 The board came to the conclusion that, in the present case, novelty is established by the purpose-related features alone. The question of whether D2 discloses all of the other features of claims 1 and 10 of the main request, as argued by the appellant, is therefore not relevant in the present case.
- 2.4 With regard to the purpose-related features, the appellant submitted two independent lines of argument which are addressed in turn below.
- 2.5 First line of argument - the purpose-related features of claims 1 and 10 of the main request were implicitly disclosed in D2
- 2.5.1 According to the appellant, the purpose of claims 1 and 10 of the main request, i.e. the reduction of spotting, was implicitly disclosed in D2. More specifically, the formation of a continuous layer of scale deposits in D2 resulted from the repeated and cumulative formation of spots during successive cleaning cycles. Therefore, for the skilled person, the inhibition of scale deposition observed in D2 implicitly meant that spotting must likewise have been reduced. For this reason alone, the

subject-matter of claims 1 and 10 of the main request lacked novelty over D2.

2.5.2 However, the board does not share the appellant's view for the following reasons.

In D2, the dishware is evaluated for the formation of scale deposits after 15 cleaning cycles. However, as submitted by the respondent, D2 does not disclose the form in which these deposits occur, i.e., in particular, whether or not spots are discernible within the deposits. Consequently, D2 does not disclose that either the cleaning process or the dishwashing detergent described therein achieves a reduction in spotting. Besides the formation of spots, D2 also appears to allow the possibility, for example, of the formation of a uniform scale deposit layer without discernible spots. Such a layer was referred to by the opposition division and the parties as "filming". To the extent that the appellant's argument implies that such a uniform scale deposit layer necessarily develops through an accumulation of spots, the appellant did not substantiate this in any way, for example by reference to relevant common general knowledge. On the contrary, the example section of the patent (tables 2 and 3) shows that filming and spotting are not directly connected and may be regulated independently of one another. The fact that filming constitutes a technical effect distinct from spotting was also established in T 3191/19 (point 2.1.1 of the Reasons).

Accordingly, the purpose-related features in claims 1 and 10 of the main request are not disclosed in D2, either explicitly or implicitly.

- 2.6 Second line of argument - the purpose-related features had no limiting effect on method claim 1 of the main request in view of T 1931/14
- 2.6.1 In the appellant's view, even if the reduction of spotting were not considered implicitly disclosed in D2, this would not affect the assessment of the novelty of the subject-matter of claim 1 of the main request. More specifically, a reduction of spotting was inevitably achieved when dishware was subjected to a wash liquor free of phosphate and dispersant polymer and comprising at least 700 ppm MGDA. Therefore, as set out in T 1931/14 (point 2.2.4 of the Reasons), the stated purpose had no limiting effect on the method claim.
- 2.6.2 However, the board does not agree with this for the following reasons.

As explained above (point 2.5.2), D2 does not disclose a reduction of spotting. The novelty of use claim 10 must therefore be acknowledged in the light of G 2/88 and G 6/88: the purpose-related feature is a functional technical feature of the claim (G 2/88, Headnote III), and even if the use described in D2 inherently anticipated the use of claim 10, such an inherent use has not thereby been made "*available to the public*" within the meaning of Article 54(2) EPC (G 2/88, points 10.1 and 10.2 of the Reasons).

The same applies to method claim 1. The Enlarged Board of Appeal regards use claims and method claims as belonging to the same category, namely claims to a physical activity (G 2/88, point 2.2 of the Reasons). Whether one and the same teaching is expressed as a method of reducing spotting (claim 1) or as a use for

the reduction of spotting (claim 10) is merely a question of wording and not of substance. There is therefore no reason why the considerations developed in G 2/88 and G 6/88 for use claims should not also apply to method claim 1.

Accordingly, the board does not follow the approach taken in T 1931/14 (point 2.2.4 of the Reasons), according to which a purpose that merely states a technical effect inevitably arising when carrying out the remaining method steps has no limiting effect. As the Enlarged Board of Appeal held, a purpose not disclosed in the prior art confers novelty even where the means described for realising it are the same as those disclosed in the prior art for a different purpose, so that the claimed purpose may unknowingly be achieved in the prior art. The relevant question when assessing the novelty of claim 1 is therefore whether the purpose defined in the claim has been made available to the public, and not whether that purpose is inevitably achieved when the claimed method steps are carried out.

The appellant further relied, in support of its argument, on decision T 304/08, in relation to which the board in T 1931/14 drew the conclusion summarised above. However, that decision concerns a method for manufacturing a product (T 304/08, point 3.3.3 of the Reasons). By contrast, as acknowledged by the appellant during the oral proceedings, claim 1 of the main request is not directed to a manufacturing method.

Thus, the purpose-related features of claim 1 of the main request have a limiting effect on the method claim and the subject-matter of this claim is novel over D2.

3. Inventive step (Article 56 EPC)

- 3.1 In the appellant's view, both D2 and D1 were suitable candidates for representing the closest prior art in the present case.

D2 as the closest prior art

3.2 Distinguishing feature

It follows from the novelty assessment above that the subject-matter of claims 1 and 10 of the main request differs from D2 at least in that it is directed to the reduction of spotting.

3.3 Technical effect and objective technical problem

If it is assumed in the appellant's favour that this different purpose is not associated with a technical effect, the objective technical problem is the provision of a further use for the composition known from D2.

3.4 Obviousness

As set out above, D2 is concerned exclusively with the inhibition of scale deposition. As argued by the respondent, D2 contains no hint or suggestion that any of the compositions disclosed therein would be suitable for the reduction of spotting. The appellant essentially argued that the skilled person would have considered using the composition of D2 for this purpose because they were aware of an interrelationship between the inhibition of scale deposition and the reduction of spotting (see points 2.5.1 and 2.5.2 above). However, the appellant did not substantiate the existence of

such an interrelationship, for example by referring to common general knowledge. Accordingly, this argument remains a mere allegation and is therefore not persuasive.

Consequently, the skilled person starting from D2 would have had no incentive to arrive at a method or use directed to the reduction of spotting. The subject-matter of claims 1 and 10 therefore involves an inventive step over D2 as the closest prior art.

D1 as the closest prior art

3.5 Similarly to the patent, D1 relates to dishwashing cleaning compositions and their use in automatic dishwashing. Specifically, in examples 4, 12 and 14 of D1 (table 1), wash liquors comprising glutamic diacetic acid and its salts (GLDA) in concentrations of 1000, 2500 and 3000 ppm, respectively, are used to clean dishware in an automatic dishwasher. Based on the observation in D1 that the dishware shows no spots after cleaning, the appellant concluded that D1 also addresses a reduction of spotting and thus the same purpose as in claims 1 and 10.

3.6 Distinguishing feature

The appellant conceded that the subject-matter of claims 1 and 10 of the main request differs from examples 4, 12 and 14 of D1 at least in that the wash liquor (claim 1) and the dishwashing cleaning composition (claim 10) comprise MGDA as the complexing agent instead of GLDA.

3.7 Technical effect and objective technical problem

3.7.1 Experimental report D9 compares two dishwashing cleaning compositions with regard to their spotting performance. The two compositions differ only in the complexing agent used. One composition is based on MGDA, whereas the other is based on GLDA. Both compositions were used under conditions resulting in the same concentration of complexing agent in the wash liquor, namely 900 ppm. The composition comprising MGDA produced fewer spots on a Collins glass than the composition comprising GLDA.

3.7.2 The board agrees with the opposition division and the respondent that D9 constitutes an independent and self-contained set of experiments. Therefore, contrary to the appellant's argument, it is not relevant that D9 differs in certain respects from the experiments disclosed in the patent, for example with regard to the method used for measuring the number of spots, the composition of the ballast soil, or the absence of a separate hand-washing step prior to cleaning in an automatic dishwasher.

Furthermore, the appellant's submission that the computer-based analysis used in D9 for counting the spots was not valid is, in the absence of any corroborating evidence, a mere unsubstantiated assertion and is therefore not convincing.

Lastly, the appellant also argued that D9 employed a lower concentration of the complexing agent (900 ppm) than D1 (1000 ppm, 2500 ppm and 3000 ppm). Since D1 showed no spots after cleaning at 1000 ppm of GLDA, the appellant submitted that MGDA could not produce fewer spots. It argued that the alleged technical effect was therefore not credible across the entire scope of the claim. The board finds this argument unconvincing,

however. If an effect is observed in D9 at 900 ppm MGDA compared to GLDA under the cleaning conditions applied therein, it is not apparent why - when applying the same cleaning conditions - no effect should be observed at higher concentrations, for example between 1000 and 3000 ppm. The mere fact that D1 shows no water spots at 1000, 2500 and 3000 ppm of GLDA under its specific cleaning conditions does not justify the conclusion that no spots would be observed at these concentrations under all other conceivable cleaning conditions, such as those applied in D9.

3.7.3 The appellant's criticism of D9 therefore does not change the conclusion drawn from this experimental report regarding the existence of the technical effect.

3.7.4 It follows that the objective technical problem is, in line with the opinion of the opposition division and the respondent, to provide an improved method and an improved use, wherein the improvement resides in the reduction of spotting on glass dishware during automatic dishwashing.

3.8 Obviousness

As argued by the respondent, neither D1 nor any of the secondary documents relied on by the appellant for inventive step (D2, D4 and D5) discloses that MGDA may influence spotting properties. Contrary to the appellant's argument, the board, in agreement with the respondent, also sees no indication that the skilled person would have associated the complexing properties of GLDA with spotting properties and that they would have sought, for that reason, improved complexing agents such as MGDA. Therefore, starting from D1 as the closest prior art and faced with the objective

technical problem formulated above, the skilled person would not have derived from D1, D2, D4 or D5 any incentive to include MGDA in the compositions of D1 or to replace GLDA with MGDA.

Summary on inventive step

- 3.9 Consequently, the board shares the respondent's view that the subject-matter of claims 1 and 10 of the main request involves an inventive step. In the absence of any further objections from the appellant, the board concludes that the main request is allowable. Thus, there is no reason for the board to overturn the opposition division's decision that under Article 101(3)(a) EPC the patent may be maintained in amended form on the basis of the main request.

Admittance of D16 and D17 into appeal proceedings
(Articles 12(4) and (6) RPBA)

4. The appellant filed D16 and D17 with its statement of grounds of appeal.

At the oral proceedings, the board decided not to admit these documents into the proceedings, in line with the respondent's request. The reasons for this decision are set out below.

- 4.1 The appellant contended that D16 and D17 were filed in response to the reasoning given in the decision under appeal. In particular, in its decision, the opposition division dismissed the appellant's inventive-step objection against the main request based on D1, reasoning that none of D2, D4 or D5 established a link between the complexing agent MGDA and its possible effect on spotting. In this context, D16 (and in

particular the figure on page 6) was *prima facie* relevant, as it promoted MGDA for its positive spotting performance. The opposition division had also reasoned that there had been no incentive for the skilled person to replace the complexing agent GLDA used in D1 with MGDA. Here, D17 (table on page 6) was evidence of the common general knowledge in this regard and was *prima facie* relevant as it showed that the complexes of GLDA with the calcium and magnesium ions responsible for water hardness were less stable than the corresponding MGDA complexes.

This is not convincing, however. As submitted by the respondent, the distinguishing feature over D1 - namely the different complexing agent (MGDA vs. GLDA) - and the associated technical effect thereof, i.e. the reduction of spotting, had been central to the opposition proceedings from the very beginning. Indeed, the respondent advanced this line of argument in its reply to the notice of opposition (see page 4) and filed D9 therewith as evidence of the alleged technical effect. It also explained why D2, D4, and D5 were not relevant in this respect. Thus, the opposition division's reasoning in the decision under appeal merely confirmed the position that the respondent had adopted from the outset of the proceedings. This line of reasoning did not arise unexpectedly and does not reflect a development that only occurred at a very late stage of the opposition proceedings.

Similarly, the appellant's argument that D16 and D17 could not have been filed earlier because they were only discovered after the opposition proceedings had concluded is unconvincing, given that a proper prior-art search should have been carried out at a much earlier stage.

Accordingly, the board concluded that both D16 and D17 could and should have been filed earlier and therefore neither document could not be admitted into the proceedings (Article 12(6) RPBA).

- 4.2 Irrespective of the preceding point, the filing of D16 and D17 constituted an amendment to the appellant's case. The appellant did not dispute this. Under Article 12(4) RPBA, the admittance of D16 and D17 is at the discretion of the board, which was able to exercise that discretion having regard to, *inter alia*, the complexity of the amendment.

The parties disagreed on whether D16 and D17 constituted prior art within the meaning of Article 54(2) EPC and whether they were therefore available for the appellant's inventive-step objections. Specifically, D16 (last page) shows the code "08_150904e-00 09.2015". The appellant considered this code to indicate that D16 had been published in September 2015 and thus prior to the effective date of the patent, which is April 2016. Likewise, the appellant relied on the indication "*Issue: June 2015*" on the last page of D17 to support the same conclusion for D17.

Given that D16 and D17 are information brochures which are generally distributed to interested persons shortly after their compilation, the board concluded that it may indeed be plausible that D16 and D17 were published in September and June 2015, respectively. However, the code in D16 and the indication in D17 alone do not constitute conclusive evidence of their publication dates, i.e. the dates on which they were actually made available to the public. The filing of D16 and D17

therefore gave rise to the complex question of their actual publication dates. Thus, the board decided not to admit D16 or D17 for this additional reason (Article 12(4) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

M. Kollmannsberger

Decision electronically authenticated