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Aktenzeichen / Case Number / N° du recours : T 314/86 - 3.3.2

Anmeldenummer / Filing No / N° de la demande : 81 305 889.8

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Bezeichnung der Erfindung: Controlled-sudsing detergent compositions

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : C11D 3/065

ENTSCHEIDUNG / DECISION

vom / of / du 14 April 1988

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent / Unilever PLC et al
Titulaire du brevet :

Einsprechender / Opponent / Opposant : Henkel KGaA

Stichwort / Headword / Référence : Washing powder / UNILEVER

EPO / EPC / CBE Art. 52(1) and 56 ; Rule 58(4) EPC

Kennwort / Keyword / Mot clé : "Inventive step" - "Claims approved by
Appellant (Opponent)"

Leitsatz / Headnote / Sommaire

In a case where an Appellant (Opponent) has expressed his agreement with a request of the Respondent (Patentee) to maintain the patent in an amended form, no communication under Rule 58(4) EPC is necessary. This position remains unchanged in the case of a later amendment when, as here, this amounts only to a further limitation of the scope of the claims (following decisions T 219/83, "Zeolites", OJ 7/1986, 211 and T 219/84 (15 July 1986)).

Summary of Facts and Submissions

- I. European patent No. 0 054 436 was granted on 13 June 1984 on the basis of six claims pursuant to European patent application 81 305 889.8 filed on 15 December 1981 which claimed the priority of an earlier application of 17 December 1980.
- II. The Appellant (Opponent) filed notice of opposition against the European patent on 4 March 1985, requesting revocation of the patent on the grounds that its subject-matter lacked novelty and inventive step.
- III. The opposition was rejected by the Opposition Division at oral proceedings which took place on 13 May 1986. The written decision setting out the grounds for rejecting the opposition was notified to the parties on 22 July 1986.
- IV. The Appellant filed a notice of appeal against this decision on 12 September 1986. The appeal fee was paid in due time. A Statement of Grounds of Appeal was filed on 22 November 1986.
- V. In response to the appeal the Respondent (Proprietor of the Patent) submitted on 4 July 1987, inter alia, a subsidiary set of claims in which the main claim appeared to be a combination of original Claims 1 and 6 (Set II).
- VI. As explained in its communication attached to the summons to oral proceedings dated 25 February 1988, the Board could see no obstacle to a patent based on claim set II, although document DE-A-2 701 663 cited in the examining proceedings now seemed to be the closest state of the art.

On 8 April 1988 a letter was filed by telecopy in which the Appellant expressly joined the view expressed by the Board in its communication. A letter reproducing the content of the telecopy was filed by the Appellant on 11 April 1988.

- VII. In accordance with the provisions of Rule 71(2) EPC, oral proceedings took place on 14 April 1988 in the absence of the Appellant.

During the hearing, it appeared that in accordance with the description of the patent-in-suit, in particular page 3, lines 29-32, the addition of an hydrocarbon oil may take place in addition to the hydrocarbon wax, which lead the Respondent then to limit the suds controller to an alkyl phosphoric acid or a salt thereof in combination with a hydrocarbon wax by deleting the reference to a hydrocarbon oil from the main claim of claim set II and to add a further dependent claim (i.e. Claim 6) directed to the inclusion in a washing powder of a suds controller which comprises both a hydrocarbon wax as well as a hydrocarbon oil in combination with an alkyl phosphoric acid or a salt thereof.

- VIII. The Appellant had initially requested that the decision under appeal be set aside and that the patent be revoked, but had, as stated above, in a telecopy filed on 8 April 1988 agreed that the patent be maintained on the basis of set II of the claims filed by the Respondent together with his letter of 4 July 1987.

The Respondent requested that the patent be maintained in amended form on the basis of Claims 1 to 6 and an adapted page 2 of the description as submitted in the oral proceedings before the Board.

Claim 1 as submitted during the oral hearing reads as follows:

1. A washing powder comprising 5% or more by weight of water soluble salts of alkyl benzene sulphonates and a suds controller comprising an alkyl phosphoric acid or a salt thereof, characterised in that the total content of alkyl groups containing 14 or more carbon atoms in the alkyl benzene sulphonates is less than 15% by weight of the alkyl material and the suds controller comprises an alkyl phosphoric acid or a salt thereof in combination with a hydrocarbon wax.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. The effective Claims 1 and 6 raise no objections on formal grounds.

The scope of present Claim 1 in comparison to that as granted is now substantially restricted by limiting the suds controller solely to a combination of a hydrocarbon wax and an alkyl phosphoric acid or a salt thereof corresponding to an embodiment originally disclosed. It is clear from the original description that the presence of a hydrocarbon oil in the suds controller is purely optional and suggested only in combination with a hydrocarbon wax, for example in order to facilitate addition of the wax or to modify its melting point or dispersion characteristics (see page 3, lines 29 to 32 of the patent-in-suit). This embodiment, however, is now covered by new claim 6. Consequently, the scope of claim 6 as granted has also undergone an important limitation.

The claims therefore comply with Article 123(2) and (3) EPC.

3. The patent relates to a controlled sudsing detergent composition.
4. The prior art document DE-A-2 701 663 (designated as document (I) hereafter) has not been challenged as the closest state of the art. This document relates to controlled low-sudsing detergent compositions (e.g. washing powders) which may comprise 5% or more by weight of a water soluble salt of an alkyl benzene sulphonate as detergent compound in combination with an alkyl phosphoric acid salt and a hydrocarbon wax such as petroleum jelly (see Claims 1, 8 and 14; page 10, line 1 ff; page 15, last paragraph to page 16, first full paragraph and page 18, lines 3 to 11), the latter acting synergistically with the alkyl phosphoric acid salt to give improved suds control at lower levels of salts than would otherwise be required (see page 14, last paragraph to page 15, first paragraph).

As stated in the patent-in-suit, it is however necessary to minimise the cost penalty involved by the use of suds controllers other than soap (see page 2, lines 6 to 11). In particular, alkyl phosphoric acid and its salts are expensive (see Respondent's statement filed on 4 July 1987, in particular point 1, first paragraph).

5. The technical problem in respect of the closest prior art consisted thus in finding a means to reduce the amount of alkyl phosphoric acid component of the suds controllers to be used in the known alkyl benzene sulphonate type washing powders.

In order to solve this problem, it is proposed, according to the characterising part of present Claim 1, to select an alkyl benzene sulphonate detergent component in which the total content of alkyl groups containing 14 or more carbon atoms is less than 15% by weight of the alkyl material in the case the suds controller comprises an alkyl phosphoric acid or a salt thereof in combination with a hydrocarbon wax.

6. Since none of the documents available to the Board from the proceedings before the EPO discloses a washing powder as defined in the present claims, the claimed object is novel.

7. The present main claim does not cover any longer the alternative of including in the suds controller a hydrocarbon oil instead of a hydrocarbon wax as suggested in set II of the claims filed on 4 July 1987. This is a significant limitation in the definition of the suds controller contained in the washing powder. Therefore, the Appellant's agreement that the patent be maintained in amended form (see first paragraph of point VIII above) remains unaffected by this further limitation of the claimed object. The Board further considers as unexpected that in washing powders of the known type a reduction of the amount of expensive alkyl phosphoric acid component in the suds controller is achieved, as shown by the results of table 2 of the patent-in-suit, by selecting a particular alkyl benzene sulphonate, viz. a detergent in which the total content of alkyl groups containing 14 or more carbon atoms is less than 15% by weight of the alkyl material. The object claimed, therefore, involves an inventive step and there can be no objection to maintain the patent in amended form in accordance with the Respondent's request at the oral proceedings.

8. In his written submission, the Appellant accepted the subsidiary request (i.e. claim set II) of the Respondent. It is the opinion of the Board that in the case where the Appellant has expressed his agreement with a request of the Respondent to maintain the patent in an amended form, no communication under Rule 58(4) EPC is necessary. This position remains unchanged in the case of a later amendment when, as here, this amounts only to a further limitation of the scope of the claims (following decisions T 219/83, "Zeolites", of 7/1986, 211 and T 219/84 (15 July 1986)).

Order

For these reasons, it is decided that:

1. the decision under appeal is set aside;
2. the case is remitted to the first instance with the instruction to maintain the patent in amended form according to Claims 1 to 6 and an adapted description page 2 as submitted in the oral proceedings before the Board.

The Registrar

The Chairman

F.Klein

P.Lançon