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File Number: T 810/91 - 3.3.1
Application No.: 87 106 843.3
Publication No.: 0 246 536
Title of invention: Caustic based cleaning composition

Classification: C11D 7/06

D E C I S I O N
of 4 September 1992

Applicant: Miles Laboratories, Inc.

Headword: Cleaning composition/MILES

EPC Articles 83 and 123(2)

Keyword: "Added subject-matter (no)"
"Feasability (yes)"



Case Number : T 810/91 - 3.3.1

D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 4 September 1992

Appellant :

Miles Laboratories, Inc.
1127 Myrtle Street
Elkhart
Indiana 46514 (US)

Representative :

Ernst, Hilmar, Dr.
c/o Bayer AG
Konzernverwaltung RP
Patente Konzern
W - 5090 Leverkusen Bayerwerk (DE)

Decision under appeal :

Decision of Examining Division 023 of the
European Patent Office dated 24 May 1991 refusing
European patent application No. 87 106 843.3
pursuant to Article 97(1) EPC.

Composition of the Board :

Chairman : K.J.A. Jahn
Members : R.W. Andrews
J.-C. Saisset

Summary of Facts and Submissions

- I. European patent application No. 87 106 843.3 (publication No. 0 246 536) was filed on 12 May 1987.
- II. By a decision dated 24 May 1991, the Examining Division refused the application on the ground that it did not comply with Article 83 EPC since, from the information in the application, it was not possible to obtain reproducible viscosity values.

The Examination Division considered that the replacement of the numerical values in the original Claim 1 by the expression "cling to the vertical walls of the surface in sufficient quantities to perform its intended function" contravened the requirements of Article 123(2) EPC.

- III. An appeal was lodged against this decision on 25 June 1991 with payment of the prescribed fee. In his Statement of Grounds of Appeal filed on 25 September 1991, the Appellant argued that the viscosity was not essential to the cleaning ability of the formulation and all that was necessary to reduce the invention to practice was to thicken the composition to a sufficient extent that it clings to the walls of an oven in sufficient quantities for it to perform its intended purpose. This could be readily found out by the skilled person with a minimum of experimentation.

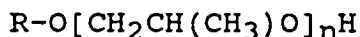
The Appellant has also contended that the above-mentioned expression is a direct substitute for the preferred viscosity range of originally filed Claim 2.

- IV. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the

set of claims and revised description filed on 9 March 1991. Claim 1 of the set of claims reads as follows:

"A composition based on alkali and water soluble solvents for removing cooking deposits from surfaces soiled with such deposits characterised in that it comprises on a weight/weight basis as a percentage of the entire composition:

- a) from 7 to 10 percent of an alkali metal hydroxide;
- b) a solvent system for the alkali metal hydroxide which comprises:
 - i. from 2 to 20 percent of tetrahydrofurfuryl alcohol, and
 - ii. from 1 to 10 percent of one or more propoxylated alcohols or phenols of the formula:



wherein R is phenyl or a straight chain alkyl of 1 to 4 carbon atoms and n is 1-3 in which the weight ratio of tetrahydrofurfuryl alcohol to propoxylated alcohol is about 2:1,

- c) an alkali compatible thickener which when present in adequate quantity will cause the composition to cling to the vertical walls of the surface in sufficient quantities to perform its intended function, said composition being further defined in that the weight ratio of alkali metal hydroxide to the solvent system is about 1:2, and
- d) the balance is water."

Reasons for the Decision

1. The appeal is admissible.
2. In the Board's judgment the amended application meets the requirements of Article 123(2) EPC.
 - 2.1 Commencing at line 15 of page 10 of the originally filed application (cf. also line 52 of page 5 of the printed application), it is disclosed that the present cleaning composition is particularly suitable for use in the oven cleaning device described in US-A-4 475 835 and that when used in this device, the preferred viscosity range is 2500 to 3600 centipoise at room temperature. It is further disclosed that in this viscosity range, the composition is easily applied with the device's scrubber and it (the compositions) clings to the vertical walls of the oven in sufficient quantities to perform its intended function. Therefore, a proper construction of this passage makes it clear that it is an inherent property of compositions having viscosities within the above-mentioned range that they adhere to the vertical walls of the surface in sufficient quantities to clean them.

Furthermore, originally filed Claim 2 related to a composition in accordance with Claim 1 having a viscosity from about 2500 to 3600 centipoise (at room temperature). Thus, the present Claim 1 may be considered to represent a combination of Claims 1 and 2 as originally filed in which the numerical definition of viscosity in original Claim 2 has been replaced by an equivalent functional definition. Since the numerical viscosity range referred to in originally filed Claim 2 fell entirely within the viscosity range (about 1000 to about 5000 centipoise at

room temperature) of Claim 1 as filed, these can be no question of the present Claim 1 extending beyond the original disclosure.

This conclusion is supported by the statement on page 3, lines 20 to 25 of the originally filed application (cf. also page 3, lines 3 to 5 of the printed application) that the caustic cleaning composition described and claimed is a highly effective cleaner which, when used to clean a soiled oven, clings to the vertical and upper walls very satisfactorily, thus enhancing the intimate contact between the cleaner and soil on all surfaces.

Claims 2 to 5 and 7 correspond to originally filed Claims 3 to 6 and 8 respectively.

For the reasons given above in connection with Claim 1, Claim 6, which is a combination of Claim 7 and 9 as originally filed, is also considered to meet the requirements of Article 123(2) EPC.

2.2 The description filed on 9 march 1981 has been amended to bring it into agreement with the amended claims and to include a reference to the prior art document EP-A-0 008 805.

2.3 However, the following amendments are also necessary:

- page 7, line 15 replace "Ten" with "Six";
- page 10, line 2, amend "and composition VII perform" to read "performs";
- page 10, line 6, change "XI" to "VII"; and
- page 10, line 10, replace "- VIII" with "and IV".

3. The replacement of the numerical viscosity range in the original Claim 1 by the present expression was necessary

since the quoted values are meaningless in the absence of any indication of the spindle size and its rate of rotation used to determine them using a Brookfield RVT viscometer.

- 3.1 It is the established jurisprudence of this Board that it is permissible to define technical features in a claim in functional terms if, from an objective viewpoint, such features cannot otherwise be defined more precisely without unduly restricting the scope of the invention, and if those features provide instructions which are sufficiently clear to the skilled person to reduce them to practice without undue burden (cf. Decision T 68/85, OJ EPO 1987, 228, particular points 8.4.2 and 8.4.3; and T 139/85 of 23 December 1986, reported in [1987] EPOR, 229).

The skilled addressee of the application would know that, as with most oven cleaning compositions, in order for the compositions to effectively clean all the surfaces of the oven, it is essential that a sufficient quantity of it remains in contact with the dirty surfaces for a certain period of time. This means that the viscosity of such compositions, irrespective of the individual cleaning components, must be of a sufficient viscosity to adhere to the verticle and upper walls of the oven. The skilled person in this technical field would be well aware of this and it is well within his competence, particularly in the light of the guidance provided by present examples, to determine without undue experimentation the amount of thickener required in any particular composition to render the composition sufficiently viscous to adhere to the vertical and upper walls in sufficient quantities to effectively clean them.

Therefore, in the Board's judgment, the present application discloses the invention in a manner sufficiently clear and complete for it to be reduced to practice by the skilled person.

4. In its communication dated 19 November 1990, the Examining Division stated that no objections arose under Article 52(1) EPC (cf. point 3). The Board sees no reasons to question this statement.

Order

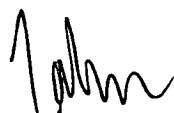
For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division with the order to grant a patent on the basis of Claims 1 to 7 and pages 1 to 10 of the description filed on 9 March 1991 incorporating the amendments to pages 7 and 10 listed in paragraph 2.3 above.

The Registrar:


P. Martorana

The Chairman:


K.J.A. Jahn