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D E C I S I O N
of 29 April 2002

Case Number: W 0003/01 - 3.3.6

Application Number: PCT/EP 99/08321

Publication Number: -

IPC: C11D 17/04

Language of the proceedings: EN

Title of invention:
Laundry care products and compositions

Applicant:
UNILEVER PLC et al

Opponent:
-

Headword:
Inadmissible protest

Relevant legal provisions:
PCT Art. 34(3)(a), (b)
PCT R. 13.1, 13.2, 68.2, 68.3(c), (e)

Keyword:
"Inadmissible protest - no reasoned statement"

Decisions cited:
W 0018/99, W 0002/00

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: W 0003/01 - 3.3.6
International Application No. PCT/EP 99/08321

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 29 April 2002

Applicant: UNILEVER PLC et al
Unilever House, Blackfriars
London EC4P 4BQ (GB)

Representative: Elliott, Peter Williams
Unilever PLC
Patent Department
Colworth House
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Subject of the Decision: **Protest according to Rule 68.3(c) of the Patent Cooperation Treaty made by the applicants against the invitation of the European Patent Office (International Preliminary Examining Authority) to restrict the claims or pay additional fees dated 13 October 2000.**

Composition of the Board:

Chairman: P. Krasa
Members: B. Günzel
G. Dischinger-Höppler

Summary of Facts and Submissions

I. On 13 October 2000 the European Patent Office, acting as International Preliminary Examining Authority for International patent application No. PCT/EP 99/08321, invited the applicants under Article 34(3) and Rule 68.2 PCT to pay 2 further examination fees on the grounds that there were three separate inventions which had been searched and which were not so linked as to form a single general inventive concept within the meaning of Rule 13.1 PCT.

II. In response, on 10 November 2000 the applicants paid these fees under protest. No reasons were given as to why the finding of lack of unity of invention by the IPEA was not correct.

III. On 6 December 2000, the review panel of the EPO under Rule 68.3(e) PCT informed the applicants that the prior review of the justification for the invitation to pay additional fees had resulted in upholding the requirement to pay additional fees and invited the applicants to pay a protest fee for the examination of the protest. In the reasons given it was set out why the review panel found the invitation to pay additional fees justified.

IV. The applicants paid the protest fee on 20 December 2000.

V. With the Board's communication dated 7 November 2001 the applicants were informed of the Board's preliminary opinion that the protest was to be regarded as inadmissible because no reasons had been given for the protest.

VI. No reply was received from the applicants.

Reasons for the Decision

According to Article 34(3)(a) and (b), in conjunction with Rule 68.2 PCT, the additional fees due if the IPEA considers that the international application does not comply with the requirements of unity of invention, have to be paid within a prescribed time limit. Rule 68.3(c) PCT provides that the applicant may pay the additional fee(s) under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention. It follows from this that the time limit for paying these fees also applies to the filing of the protest and that when paying under protest, the applicant has, at the same time or at least within the time limit stated for the payment, to file with the same authority substantive arguments supporting his opinion that the claimed subject-matter complies with the requirement of unity of invention provided for in Rule 13.1 and 13.2 PCT. According to the established jurisprudence of the boards of appeal the reasoning must contain verifiable grounds indicating why the applicant considers unity of invention to be present. A protest which has not been - or not been sufficiently - reasoned within the time limit for filing the protest is to be rejected as inadmissible, see Case Law of the Boards of Appeal of the European Patent Office, 3rd edition 1998, IX, C, 1.3, for the EPO acting as IPEA, and IX, B., 2.2 for the EPO acting as ISA. In view of the inadmissibility of the protest, there was no legal basis for the invitation to pay the protest fee. Therefore, the protest fee is to be refunded, see also e.g. more recent unpublished decisions W 18/99 dated 17 April 2000 and W 2/00 dated 18 October 2000.

In the present case no reasons at all have been given for the

protest.

Order

For these reasons it is decided that:

1. The protest is rejected as inadmissible.

2. The reimbursement of the protest fee is ordered.

The Registrar: The Chairman:

G. Rauh P. Krasa