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D E C I S I O N
of 28 May 2004

Case Number: T 0380/01 - 3.3.6

Application Number: 93200602.6

Publication Number: 0561446

IPC: C11D 11/00

Language of the proceedings: EN

Title of invention:
Detergent compositions

Patentee:
UNILEVER N.V., et al

Opponent:
The Procter & Gamble Company

Headword:
Washing of culinary utensils/UNILEVER

Relevant legal provisions:
EPC Art. 54

Keyword:
"Interpretation of claims"
"Novelty (no)"

Decisions cited:
-

Catchword:
Two washing methods (of culinary utensils) having no technical bearing on each other cannot form a single multi-step process (i.e. a "technical whole") though being linguistically linked together (point 1.5 of the Reasons for the Decision) in a claim. If one of these methods forms already part of the state of the art, the subject-matter of this claim does not satisfy the requirements of Articles 52(1) and 54 EPC (points 2.1, 2.2 and 2.7 of the Reasons for the Decision).

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0380/01 - 3.3.6

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 28 May 2004

Appellant: (Opponent)
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 1 February 2001 concerning maintenance of European patent No. 0561446 in amended form.

Composition of the Board:

Chairman: P. Krasa
Members: P. Ammendola
U. J. Tronser

Summary of Facts and Submissions

I. This appeal is from the interlocutory decision of the Opposition Division concerning the maintenance in amended form of European patent No. 0 561 446, relating to detergent compositions.

II. The Appellant (Opponent), in its notice of opposition, had sought revocation of the patent in suit on the grounds of lack of novelty and of inventive step (Article 100(a) in combination with Articles 52(1), 54 and 56 EPC) and cited, *inter alia*, the following document:

Document (7): EP-A-0 318 204.

III. At the oral proceedings before the Opposition Division, the Respondents (Patent Proprietors) filed a set of three amended claims and an amended description adapted thereto.

Claim 1 of the patent in this amended form reads:

"1. *A method for washing culinary utensils in a mechanical dishwasher characterised by dispensing into the dishwasher quantities of a plurality of cleaning compositions out of respective separate containers, and operating the dishwasher so that the dispensed quantities of compositions are all mixed into the same wash liquor,*
the compositions being different from each other, but each composition containing at least 50% by weight of organic and/or inorganic salt(s) other

than bleaching components, enzymes and detergent surfactants,
further comprising dispensing only a single one of the compositions to wash other loads of culinary utensils."

The remaining claims 2 and 3 define further embodiments of the method of claim 1.

IV. In its decision, the Opposition Division found that the patent as amended met the requirements of the EPC.

In particular, the subject-matter of the above-cited claim 1 was found to differ from that disclosed in example 1 and page 4, lines 24 to 26, of Document (7) in that it called for a further washing step of other loads of culinary utensils comprising dispensing only a single detergent composition into the wash liquor (see the decision under appeal, point 14.b of the reasons).

V. The Appellant lodged an appeal against this decision objecting *inter alia* that the prior art disclosed in Document (7) would instead anticipate the claimed subject-matter (see section 3 of the statement setting out the grounds of appeal).

In this respect it submitted orally that the claimed method for washing culinary utensils would not represent a technical whole, but rather resulted from combining two totally independent, alternative washing methods. In view of this consideration and since the first of these two methods was already directly and unambiguously disclosed in Document (7), the Appellant

concluded that at least part of the subject-matter of the above-cited claim 1 would not be novel.

VI. The Respondents in their reply of 19 October 2001 to the grounds of appeal refuted the Appellant's objection in respect of novelty of the claimed subject-matter. They maintained that the claimed method requires the provision of a plurality of cleaning compositions, each of which is contained in a separate container and **further** requires that a single one of the compositions is used to wash certain loads of utensils. They argued that Document (7) would disclose neither the use of a single tablet to wash a load of utensils, nor the activity of dispensing into a dishwasher a plurality of cleaning compositions out of respective separate containers.

VII. Oral proceedings were held before the Board on 28 May 2004. As announced in their fax of 24 May 2004, the Respondents were not represented at the hearing.

VIII. The Appellant requested that the decision under appeal be set aside and that the European patent No. 0 561 446 be revoked.

The Respondents requested in writing that the appeal be dismissed.

Reasons for the Decision

1. *Subject-matter of claim 1 of the patent in the amended form found by the Opposition Division to meet the requirements of the EPC*

1.1 The method of washing culinary utensils in a mechanical dishwasher defined in the above-cited amended claim 1 comprises:

- a first washing treatment (hereafter "washing A") wherein culinary utensils are washed in a mechanical dishwasher, that operates with a wash liquor obtained by dispensing therein out of respective separate containers **a plurality** of different cleaning compositions, whereby each composition comprises at least 50% by weight of salt(s),
  and
- a second washing treatment (hereafter "washing B") wherein **other** loads of culinary utensils are washed in a mechanical dishwasher with wash liquor obtained dispensing therein **only one** of the cleaning compositions.

1.2 The Appellant has maintained that even though the two washings "A" and "B" are mentioned in the same claim, they are completely independent and, thus would not form a "technical whole".

1.3 The Respondents' observations as to the novelty of the claimed subject-matter (see above section VI of the Facts and Submissions) imply instead that the two washing steps "A" and "B" would represent two steps of a single multi-step washing method.

1.4 The Board observes that in the field of chemistry in general, and in particular of chemical operations (such as washing culinary utensils), a multi-step process or method is intrinsically characterized by the fact that each step preceding the final one produces at least one "intermediate product" - whereby this expression might indicate any kind of products, i.e. not only the main materials formed in that step, but e.g. a by-product, or some form of energy, or some kind of order in the matter, etc. - which is then **used** in the subsequent step, so as to form a continuous chain starting from the initial starting material(s) and ending with the product(s) of the last step.

1.5 The Board notes that in the present case, the washings "A" and "B" are carried onto **different** loads of culinary utensils and **none** of the "products" (of any kind) which are possibly formed e.g. in "washing A" is then used in the subsequent "washing B" or *vice versa*.

Moreover, the two kinds of washings are technically independent in every other aspect too. The claim in question neither **limits** the time interval in which both "washing A" and "washing B" should occur, nor requires that they should **necessarily** occur at the same place, or by using the same mechanical dishwasher or the same "set" of separate containers holding the different compositions, or that the loads of culinary utensils washed in these washing steps must belong to a specific single initial batch thereof, etc.. In other words, "washing A" has no technical bearing whatsoever on "washing B" and, *vice versa*, "washing B" has no technical bearing whatsoever on "washing A".

Therefore, washings "A" and "B", though linguistically linked together ("*A method ……characterized by……further comprising……*"; see above point III) cannot possibly form a single multi-step washing method or some other kind of "technical whole" and, hence, claim 1 simply enumerates two **completely independent** washing methods without any technical link to each other.

2. *Novelty (Article 100(a) in combination with Articles 52(1) and 54 EPC) of claim 1 of the patent in the amended form found by the Opposition Division to meet the requirements of the EPC*

2.1 It is self-evident that if a claim enumerates a plurality of separate objects, **each** of these objects must be novel *per se* in order to satisfy the requirements of Article 54 EPC.

2.2 Therefore and in view of the conclusions reached in point 1.5 above, the Board finds that **each** of "washing A" and "washing B" listed in present claim 1 should not form part of the state of the art in order for the subject-matter of this claim to be novel.

Hence, contrary to the finding of the Opposition Division, the (alleged) novelty of "washing B" cannot possibly play a role in assessing whether or not the portion of subject-matter of claim 1 defining "washing A" is novel. It must rather be established if, as alleged by the Appellant, "washing A" *per se is* anticipated by the prior art disclosed in Document (7) or not.

2.3 The Respondents' only argument relevant to the novelty of "washing A" *per se*, is that such prior art would not disclose the "separate containers" out of which the plurality of cleaning composition must be dispensed into the wash liquor.

2.4 The Board cannot accept this argument for the following reason.

Document (7) (see in particular claim 6) relates to a washing method for washing dishes in a mechanical dishwasher wherein the wash bath is obtained using a detergent composition formed by at least two types of tablets. At page 4, lines 24 to 26, of Document (7) it is explicitly stated that "*It could fall within the scope of the present invention that the tablet types are packaged separately, and added by the consumer to the wash.*" which amounts to the disclosure of the activity of dispensing a plurality of tablets out of separated containers into the wash liquor.

2.5 The Board finds, therefore, that the above identified passage at page 4 of Document (7) discloses (an embodiment of the method defined in claims 6 of Document (7), i.e.) a **method for washing** culinary utensils such as plates in an automatic dishwasher by dispensing in the wash bath the two or more detergent powders or tablets disclosed in this citation. In this embodiment, the two or more detergent powders or tablets are dispensed into the dishwasher by the consumer, who takes them out of the separate containers in which they have been separately packed.
Since specific pairs of these detergent powders or tablets are described in the only example of Document

(7), this citation also discloses directly and unambiguously to use any of these pairs of detergent powders or tablets in the above-identified washing method.

2.6 In view of this conclusion and considering that

- the patent in suit explicitly recognises the activity of transferring the tablets from their (separated) packaging into the dishwasher as an example of "dispensing" according to the claimed method (see the paragraph at page 5, lines 34 to 38, and in particular the sentence "*Dispensing into a machine may consist of putting appropriate quantities of each of two compositions into a dispensing compartment of a dishwasher.*"), and

- each powder or tablet of all the pairs of the only example of Document (7) comprises more than 50% by weight of organic or inorganic salts,

it appears evident that this citation discloses directly and unambiguously washing methods with all the features given in present claim 1 for defining the above-identified "washing A".

It should be mentioned that the Opposition Division also arrived at corresponding conclusions in denying the novelty of the "product" claims originally present in the patent as granted, which included only the embodiment of "washing A" (see point 12 of the decision under appeal).

2.7 Since Document (7) anticipates at least one of the two completely independent washing methods defined in present claim 1, the Board concludes that the patent as amended, in the form found by the Opposition Division to meet the requirements of the EPC, does not comply with the requirements of Articles 52(1) and 54 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Rauh P. Krasa