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**Datasheet for the decision  
of 9 November 2006**

**Case Number:** T 0019/02 - 3.3.07

**Application Number:** 92310294.1

**Publication Number:** 0550960

**IPC:** A61K 7/32

**Language of the proceedings:** EN

**Title of invention:**

Antiperspirant materials and compositions

**Patentee:**

UNILEVER PLC, et al

**Opponent:**

Henkel Kommanditgesellschaft auf Aktien

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 83, 54, 56

**Keyword:**

"Disclosure - sufficiency (no) (main and first and second auxiliary request)"

"Novelty (yes) (third auxiliary request)"

"Inventive step (yes) (third auxiliary request)"

**Decisions cited:**

G 0002/88, T 0435/91

**Catchword:**

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Case Number: T 0019/02 - 3.3.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.07  
of 9 November 2006

**Appellant 2:** Henkel  
(Opponent) Kommanditgesellschaft auf Aktien  
TFP / Patentabteilung  
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**Representative:** -

**Appellant 1:** UNILEVER PLC, et al  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
6 November 2001 concerning maintenance of  
European patent No. 0550960 in amended form.

**Composition of the Board:**

**Chairman:** S. Perryman  
**Members:** B. ter Laan  
F. Rousseau

## Summary of Facts and Submissions

I. Mention of the grant of European patent No. 0 550 960 in respect of European patent application No. 92 310 294.1, filed on 11 November 1992, was published on 30 June 1999. The patent was granted on the basis of eighteen claims, the independent claims reading:

"1. An antiperspirant composition suitable for topical application to human skin, comprising an antiperspirant active which comprises at least one amphiphilic material in an amount of from 10-80% by weight of the composition, the amphiphilic material being one which forms, upon contact with perspiration, a water-insoluble liquid crystal phase of greater than one-dimensional periodicity, the balance of the composition comprising conventional ingredients of an antiperspirant composition which includes a cosmetic vehicle."

"17. A method of preventing or reducing perspiration at the human skin surface comprising applying thereto an antiperspirant composition comprising an antiperspirant active which comprises at least one amphiphilic material, the antiperspirant active being one which forms upon contact with perspiration, a water-insoluble liquid crystal phase of greater than one-dimensional periodicity."

"18. Use as an antiperspirant active of an amphiphilic material, which active forms, upon contact with perspiration, a water-insoluble liquid crystal phase of greater than one-dimensional periodicity."

II. A notice of opposition against the granted patent was filed on 29 March 2000, in which the revocation of the patent in its entirety was requested on the grounds of lack of novelty and inventive step, insufficient disclosure and extension of the subject-matter beyond that originally filed, as set out in Articles 100(a), 100(b) and 100(c) EPC. The latter ground was not maintained anymore during the oral proceedings before the Opposition Division.

The opposition was, *inter alia*, supported by document

D2: Dehydag Kosmetik Modell-Rezepturen, 1979,  
pages 143-148.

III. In a decision issued in writing on 6 November 2001, the Opposition Division decided that the patent could be maintained in amended form based on the fourth auxiliary request filed during the oral proceedings.

(a) It was held that the subject-matter of the claims as granted as well as that of the claims of the first to third auxiliary requests did not fulfil the requirements of Article 83 EPC since, although the patent contained sufficient information to allow the skilled person to find suitable amphiphilic compounds, the elaborate testing necessary to decide whether compounds were suitable for the purpose of the patent in suit constituted an undue burden. Such was, however, not the case with the fourth auxiliary request.

(b) As regards novelty, the prior art did not disclose that amphiphilic compounds could form a water-insoluble liquid crystal phase of greater than one-dimensional periodicity, nor that they were, as a consequence, useful as an active ingredient in antiperspirant compositions. Moreover, the prior art did not disclose a thus specified amphiphilic compound in an antiperspirant composition.

(c) As to inventive step, the use of amphiphilic compounds in antiperspirant compositions was known, however for other purposes, and those known compounds were not able to form a water-insoluble liquid crystal phase of greater than one-dimensional periodicity. The problem solved by the patent in suit was to provide alternative antiperspirant compounds. Since the prior art did not contain any hint that a specific subgroup of amphiphilic compounds could be used as an active ingredient against perspiration, the subject-matter was considered inventive.

IV. On 2 January 2002, the proprietor lodged an appeal against the above decision and paid the prescribed fee on the same day. With the statement setting out the grounds of appeal filed on 11 March 2002, a further set of amended claims 1 to 13 was submitted as auxiliary request 4A.

On 3 January 2002, the opponent also filed an appeal against the above decision, the prescribed fee being paid on the same day. In the statement setting out the grounds of appeal filed on 12 March 2002, the opponent

submitted a further document and by letter dated 6 October 2006, a test report including the results of an X-ray examination carried out on a formulation of D2, together with two product information sheets of Henkel. Those documents were however not further referred to.

- V. Oral proceedings before the Board were held on 9 November 2006. During the oral proceedings, after discussion of the main and auxiliary requests, the Appellant filed three new auxiliary requests to replace the auxiliary requests then on file.

Claim 1 of the first auxiliary request reads:

"An antiperspirant composition suitable for topical application to human skin, comprising an antiperspirant active which comprises at least one amphiphilic material in an amount of from 10-80% by weight of the composition, the amphiphilic material being one which forms, upon contact with perspiration, a water-insoluble liquid crystal phase of greater than one-dimensional periodicity and which is selected from the group consisting of: glycerol monooleate, optionally as a mixture with oleic acid; a mixture of glycerol monolaurate and oleic acid; glycerol monolaurate in combination with any of oleyl alcohol, isostearyl alcohol or a mixture of isostearyl alcohol and stearyl alcohol; mixtures of polyoxyethylene ethers; a mixture of sodium oleate with oleic acid or oleic alcohol, or potassium oleate with oleic acid or oleic alcohol; a mixture of lecithin and oleic acid or oleic alcohol; an equimolar mixture of poly(dimethyl diallyl ammonium chloride) and sodium dodecyl sulphate; sodium 10- $\Omega$ -butyl (poly(dimethyl-siloxy)dimethyl silyl] decanoate;

a mixture of oleyl alcohol and triethylene glycol mono hexadecyl ether at a weight ratio of 5-13 : 95-87 or 15-25 : 85-75; a mixture of ceramides (from bovine brain) and glycerol monooleate at a weight ratio of 5-30 : 95-70; a mixture of oleyl alcohol and hexadecyltrimethylammonium chloride at a weight ratio of 70-75 : 30-25; a mixture of cyclcohexane and didodecyldimethylammonium chloride at a weight ratio of 23.5 : 76.5; a mixture of lysozyme and glycerol monooleate at a weight ratio of 20 : 80; a mixture of dodecyltrimethylammonium chloride and oleic acid at a weight ratio of 29 : 71; a mixture of oleyl alcohol and distearyldimethylammonium chloride at a weight ratio of 40 : 60; a mixture of oleic acid and distearyldimethylammonium chloride at a weight ratio of 40 : 60; a mixture of glycerol monooleate and tetradecane at a weight ratio of 90 : 10; a mixture of glycerol monooleate and hexadecane at weight ratio of 95-65 : 5-35; a mixture of glycerol monooleate and silicone oil (DC 246 ex Dow Corning) at a weight ratio of 87-80 : 13-20; a mixture of oleic acid and alkyl polyglucoside (APG 600 ex Henkel) at a weight ratio of 50-60 : 50-40; a mixture of oleyl alcohol and alkyl polyglucoside (APG 600 ex Henkel) at weight ratio of 50-60 : 50-40; a mixture of glycerol monooleate and batyl alcohol, chimyl alcohol, or 1-mono-isostearyl glyceryl ether at a weight ratio of 95 : 5; triethylene glycol mono hexadecyl ether; and mixtures thereof; the balance of the composition comprising conventional ingredients of an antiperspirant composition which includes a cosmetic vehicle."

Claim 1 of the second auxiliary request is the same as claim 1 of the first auxiliary request except that the

words "and mixtures thereof;" four lines from the end have been deleted and at the end there has been added the additional requirement "wherein the antiperspirant active has a solubility in water or sweat of less than 0.1% by weight (at 35°C)."

Claim 1 of the third auxiliary request reads:

"Use as an antiperspirant active of an amphiphilic material, which active forms, upon contact with perspiration, a water-insoluble liquid crystal phase of greater than one dimensional periodicity, wherein the amphiphilic material is selected from the group consisting of: a mixture of oleyl alcohol and glyceryl monolaurate at a weight ratio of 24-26 : 76-74 or 28-44 : 72-56; a mixture of oleyl alcohol and triethylene glycol mono hexadecyl ether at a weight ratio of 5-13 : 95-87 or 15-25 : 85-75; a mixture of ceramides (from bovine brain) and glyceryl monooleate at a weight ratio of 5-30 : 95-70; a mixture of oleyl alcohol and hexadecyltrimethylammonium chloride at a weight ratio of 70-75 : 30-25; a mixture of cyclcohexane and didodecyldimethylammonium chloride at a weight ratio of 23.5 : 76.5; a mixture of lysozyme and glyceryl monooleate at a weight ratio of 20 : 80; a mixture of diethylene glycol mono oleyl ether and pentaethylene glycol monooleyl ether at a weight ratio of 66-76 : 34-24 or 80 : 20; a mixture of isostearyl alcohol and glyceryl monolaurate at a weight ratio of 21-26 : 79-74 or 30-45 : 70:55; a mixture of dodecyltrimethylammonium chloride and oleic acid at a weight ratio of 29 : 71; a mixture of oleyl alcohol and distearyldimethylammonium chloride at a weight ratio of 40 : 60; a mixture of oleic acid and



distearyldimethylammonium chloride at a weight ratio of 40 : 60; a mixture of oleic acid and lecithin at a weight ratio of 34-50 : 66-50; a mixture of glyceryl monooleate and tetradecane at a weight ratio of 90 : 10; a mixture of glyceryl monooleate and hexadecane at a weight ratio of 95-65 : 5-35; a mixture of glyceryl monooleate and silicone oil (DC 246 ex Dow Corning) at a weight ratio of 87-80 : 13-20; a mixture of oleic acid and alkyl polyglucoside (APG 600 ex Henkel) at a weight ratio of 50-60 : 50-40; a mixture of oleyl alcohol and alkyl polyglucoside (APG 600 ex Henkel) at a weight ratio of 50-60 : 50-40; a mixture of glyceryl monooleate and batyl alcohol, chimyl alcohol, or 1-mono-isostearyl glyceryl ether at a weight ratio of 95 : 5 and triethylene glycol mono hexadecyl ether."

Claims 2 to 10 and those indicated as 12 and 13 (the renumbering to 11 and 12 was omitted) are dependent from claim 1.

VI. The Proprietor's arguments given in writing and during the oral proceedings can be summarised as follows:

- (a) According to claim 1, it was the amphiphilic compound itself that should be able to form the required crystal structure. It was not necessary that the crystal structure was present in the antiperspirant, but it should be able to be formed upon contact with perspiration. Only those compositions in which the crystal structure could form were within the scope of the claim. Compositions containing compounds that interfered with crystal formation or that did not have the

correct ratio of compounds for the crystals to form, did not fall under the claim.

- (b) As the patent concerned a new material, a broad claim was justified. The tests used to establish crystal formation were known and also described in the patent specification. In order to choose appropriate materials, there was no need to construct the full phase diagram nor to look at mixtures other than those of the amphiphilic material and water since the required crystal structure defined in the claims referred to the amphiphilic material and not to the composition as a whole. One simple test was sufficient to determine whether an amphiphilic material had the required property. Any amphiphilic material having such phase behaviour would function as an antiperspirant active.

Furthermore, the patent in suit disclosed a large number of amphiphilic compounds having the required property, as well as, in more general terms, categories of preferred compounds. Also, many examples and figures were given so that there was ample information for the skilled person on how to carry out the invention. The skilled person would know that the presence of volatile compounds, such as ethanol, was not to be taken into account since it evaporated quickly from the composition, once applied to the skin. The amount of perspiration did not play a role because a concentration gradient to the sweat gland would always occur, a gel would form and plug the gland, thus preventing perspiration.

The final formulation of the amphiphilic material having the specified property into an antiperspirant composition was a simple task for the skilled person. Thus, the skilled person reading the patent specification was able to carry out the invention in all its essential aspects.

There was no evidence on file that the skilled person would not be able to carry out the invention, the burden of proof for which lay with the Opponent.

- (c) With regard to the auxiliary requests, they complied with Article 123(2) EPC as they were based on the application as originally filed.
- (d) In the auxiliary requests, the possible amphiphilic materials were more restricted, in the third auxiliary request even to the use of amphiphilic compounds from the specific list of compounds used in the examples. That simplified the testing of the phase behaviour of the amphiphilic material. The arguments regarding Article 83 EPC given for the main request applied even more strongly to the auxiliary requests.
- (e) None of the cited documents disclosed that the compounds used had the required phase behaviour, so that novelty was given.
- (f) The problem to be solved formulated regarding D2, which was the closest document, was seen as to provide a further antiperspirant. There was no

indication in D2 or in any of the other documents on file that other amphiphilic compounds than those mentioned in the prior art, in particular those that should be present in the antiperspirant compositions according to the present claims, would have the desired effect. Therefore, the claimed subject-matter was inventive.

VII. The Opponents' arguments given in writing and during the oral proceedings can be summarized as follows:

- (a) As regards sufficiency of disclosure, the skilled person had to select from all possible amphiphilic compounds those which upon contact with perspiration form liquid crystals of greater than one-dimensional periodicity. There was no teaching in the patent in suit, except for the examples, which compounds and amounts thereof were necessary to meet that requirement. Compounds similar to those of the examples would often not fulfil the requirements identified in the claims. There was no indication in the patent specification how to select suitable amphiphilic compounds from the considerable number of such compounds mentioned in the patent specification in a general way.

The formation of two or three dimensional liquid crystals also depended on the weight ratio of amphiphilic substance and water and was sometimes restricted to only small areas within the complete phase diagram, as could be seen from the figures in the patent in suit. Compounds that, in

a certain ratio to water, formed the required crystal structure, might not do so when different amounts were used. Hence, the skilled person had to make a complete phase diagram for each amphiphilic compound or for any mixture of such compounds, involving a great number of experiments. The patent in suit did not meet the requirements set out in decision T 0435/91 (OJ EPO 1995, 188) for compositions of which a component is defined by its function.

In addition, other ingredients of the composition should not interfere with the formation on the skin of the required water-insoluble liquid crystal phase. No indication was given of the interactions between the various ingredients, so that yet further testing was necessary to see if an amphiphilic compound/water combination that had been found to form the required crystals by itself, also did so in the presence of other ingredients.

The number of tests required for establishing whether a composition fell under the claim or not was too large. Hence, the claimed subject-matter could not be carried out within the whole ambit of the claims without undue burden.

- (b) Regarding the auxiliary requests, objections under Article 123(2) EPC were raised against the first and second auxiliary requests.
- (c) The arguments brought forward regarding sufficiency of disclosure for the main request were also valid for the auxiliary requests with

the exception of the third auxiliary request which had been restricted to the specific compounds and amounts of the examples.

- (d) As to inventive step, the closest document was D2, the problem to be solved was to provide a further antiperspirant composition. In view of the compounds used in the prior art, it was obvious to employ the present amphiphilic compounds

VIII. The Proprietor requests that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, alternatively, on the basis of the first, second or third auxiliary request as submitted during the oral proceedings on 9 November 2006.

The Opponent requests that the decision under appeal be set aside and that the patent be revoked.

### **Reasons for the Decision**

1. The appeal is admissible.

#### *Main request*

#### Sufficiency of disclosure

2. The first question to be answered is which antiperspirant compositions exactly fall under the claims.

- 2.1 According to claim 1, the amphiphilic material should, upon contact with perspiration, form a water-insoluble liquid crystal phase of more than one periodicity. According to claim 17, it should be the antiperspirant active containing an amphiphilic material that forms the crystal structure. In paragraph [0007] of the patent in suit it is stated that in the context of the invention an "amphiphilic material" may also contain non-amphiphilic compounds, whereas paragraph [0013] refers to certain "amphiphilic substances" or mixtures thereof, which pass through physical phases on the addition of water. In figure 3, the phase diagram of a mixture of glyceryl monooleate/oleic acid/water is given, in figure 4 that of glyceryl monolaurate/oleic acid/water and figure 5 is the phase diagram of glyceryl monooleate/ethanol/water. Furthermore, additional ingredients should not interfere with the formation of the crystal structure (paragraph [0032]).
- 2.2 Although the wording of claim 1 in itself is clear, claim 17 and the patent specification cast doubt on its exact meaning. There is confusion as to whether the amphiphilic compound itself, or, in case of mixtures, all the amphiphilic compounds, should form the required crystal structure and whether other than amphiphilic compounds may play a role in forming the crystal structure. These unclarities by themselves already hinder the skilled person in understanding which compositions are within the scope of the claims and hence how to prepare the compositions falling within the claims.
3. According to the patent proprietor, the amphiphilic compound itself should be able to form the crystal

structure, even if such a structure was not actually present in the composition when it was applied to the skin. It was also stated that the desired phase could also be achieved by interaction with a non-amphiphilic material. However, if other components present in the composition interfered with the formation of the required crystal structure, such a composition did not fall under the claims.

- 3.1 Following that explanation, and in line with the requirement in the claims that the composition should be "antiperspirant", compositions containing an amphiphilic compound that by itself is capable of forming the desired structure, are not part of the invention if some ingredient of the composition as a whole prevents the crystal structure from forming. Therefore, it is not sufficient to establish which amphiphilic compounds at which ratios with water are capable of forming the structure, but in order to know if a composition falls within the scope of the claims, the skilled person would also need to test the composition as a whole, with all the ingredients present, for the formation of the required crystal structure.

According to the proprietor, one simple test was enough to establish whether an amphiphilic compound formed the required crystal structure. However, that is only true if the compound does form the structure. Problems arise in case the skilled person found that an amphiphilic compound did not form the structure.

The patent specification contains no general guidance for the skilled person in which direction to make



modifications if the crystal structure is not formed in the tested amphiphilic compound or mixture of compounds. From figures 3, 4 and 5, it appears that the crystal structures are formed only in a small area of the phase diagram and that the relative concentrations of the compounds are rather critical. The examples provide a number of combinations that apparently function, but from those again no systematic teaching can be gathered as to which combinations of amounts and compounds are effective and which are not. If an amphiphilic compound does not form the crystal structure at a certain ratio with water, it is not evident whether the structure will form at a different amount of water - in which case the amphiphilic compound would be suitable, or if it will not form at all - in which case it would not be suitable.

- 3.2 Moreover, once the skilled person has established which amphiphilic compound(s) in which ratio(s) with water comply with the requirements of the claims, the next step would be to check if the whole composition containing other ingredients in addition to that amphiphilic compound, complies with the requirement of being an antiperspirant. If the composition does not act as an antiperspirant and hence does not fall under the claims, the patent in suit should contain indications in which direction to change the composition in order to achieve the antiperspirant function, such as by changing the amounts of the various ingredients, including the amphiphilic compound, or by adding further ingredients. However, neither from the patent specification nor from the examples can the skilled person derive a teaching capable of being generalized to a guidance in which direction to go if

the tested combination does not function. Therefore, each and every possibility of the numerous combinations encompassed by the claims would have to be tested.

Simply to say that any composition that does not fulfil the required properties falls outside the scope of the claims without presenting, at the same time, a clear guidance of how to arrive at compositions that do comply with the claimed requirements, leaves the skilled person with the task of first finding, amongst the numerous possibilities offered in the patent specification, those amphiphilic compounds capable of forming a liquid crystal phase of greater than one-dimensional periodicity, and then, additionally, the compositions containing them that have an antiperspirant function, or, in other words, those compositions that contain no ingredients that obstruct the formation of the crystal structure. Apart from the fact that the patent specification also contains no clues to the level of antiperspirant activity at which a composition can be considered to be an antiperspirant in the sense of the claims, finding those compositions that effectively do function as antiperspirants cannot be done without a huge amount of experimenting. The Board considers this to be an undue burden.

- 3.3 Therefore, the requirements of Article 83 EPC are not only contravened because of the lack of a technical concept regarding the functional definition of a component of the composition (as in Decision T 435/91 *supra*, in particular Reasons 2.2.1), i.e. the amphiphilic compound, but also because of lack of sufficiency concerning the functional definition of the composition as a whole.

4. In view of the above conclusion, the main request has to be refused.

*First auxiliary request*

Amendments

5. Claim 1 of the first auxiliary request has been restricted in that the amphiphilic compounds are now selected from those compounds or combinations of compounds mentioned on page 3 of the patent specification (paragraphs [0021] to [0025]; corresponding to page 6, line 17 to page 7, line 24 of the original application) and in the examples, with, however, the addition that also "mixtures thereof" can be used. The use of mixtures of the amphiphilic compounds mentioned in the passage cited above and in the examples finds however no support in the original application, nor is it clear from it that such mixtures would form the required crystals. The passage to which the patent proprietor referred on page 2, lines 13 to 15 of the application as filed, according to which amphiphilic material may include a mixture of materials, is very general and does not disclose the more specific mixtures now defined in claim 1, so that it cannot serve as a basis for the amendment. Article 123(2) EPC is not complied with.
6. In spite of the restriction, the number of experiments necessary to establish which compounds or combinations of compounds fulfil the claimed requirements remains very large since many amphiphilic compounds have only been indicated in a general way as members of groups of

compounds that contain many possibilities. The "mixtures of polyethylene ethers" mentioned on page 3, line 46, of the patent specification are an example of such a large group of possible compounds. Also, the further possible ingredients have not been defined. Therefore, the arguments regarding the main request also apply, *mutatis mutandis*, to the first auxiliary request. The requirements of Article 83 EPC are not fulfilled.

7. For the above reasons, the first auxiliary request has to be refused.

#### *Second auxiliary request*

#### Amendments

8. The second auxiliary request differs from the first one in that the passage regarding the use of mixtures of amphiphilic compounds has been deleted and the requirement that "the antiperspirant active has a solubility in water or sweat of less than 0.1% by weight (at 35°C)" has been added. This requirement had been disclosed in claim 2 and on page 4, lines 20 to 23 of the original application, however, merely as a general preference, not in combination with the more specific (groups of) compounds now identified in claim 1, for which the application provides no basis that they meet this general preference. Therefore, the original application provides no basis for the amendment (Article 123(2) EPC).

### Sufficiency of disclosure

9. Furthermore, the amendments to the second auxiliary request result in requiring the listed compounds to fulfil claimed requirements regarding solubility, thus increasing the number of experiments needed to establish which compounds or combinations of compounds fulfil those requirements while the application provides no guidance on what to do to ensure compliance. The same arguments that there is undue burden to carry out the invention over the claimed scope therefore also apply to the second auxiliary request. The requirements of Article 83 EPC are not fulfilled.
10. In view of the above, the second auxiliary request has to be refused.

### *Third auxiliary request*

#### Amendments

11. Claim 1 of the third auxiliary request has been restricted to the use as an antiperspirant active of the amphiphilic compounds specified in the examples of the application as originally filed. As the protection conferred by the claims is not extended by the change of claim category, the amendment is permissible (in line with Decision G2/88, OJ 1990, 93). Therefore, the requirements of Articles 123(2) and 123(3) are fulfilled.

#### Sufficiency of disclosure

12. The present wording leaves no doubt as to which combinations of compounds at which ratios fall within the scope of the claims; there is no need for cumbersome explorations by the skilled person to look for compounds and conditions with which the required crystal structure forms. Since the claims have been restricted to the use of the exemplified amphiphilic compounds used in the examples as antiperspirant actives and from the examples it is clear how to use them in antiperspirant compositions, Article 83 EPC is complied with.

#### Novelty

13. The opponent did not raise any novelty objection against the claimed subject-matter. Since none of the documents on file discloses the use as antiperspirant actives of the specific combinations of compounds now defined in the claims, the Board sees no reason to take a different position. Article 54 EPC is complied with.

#### Inventive step

14. The patent in suit concerns antiperspirant materials and compositions. Antiperspirant materials and compositions are also described in D2, which the parties as well as the Board consider to be an appropriate starting point for assessing the presence of an inventive step. The problem that the patent in suit seeks to solve is to provide the use of further antiperspirant actives suitable for antiperspirant compositions. In view of the examples, it can be

accepted that the above-defined problem is effectively solved by the subject-matter now being claimed.

15. It remains to be decided if the claimed solution was obvious in the light of the documents on file.

D2 is a collection of formulations for the preparation of cosmetic compositions containing products of the opponent. On page 144, two formulations for antiperspirant creams are given that both contain aluminium chlorohydrate, which was accepted by both parties to act as an antiperspirant active. The formulations also contain compounds that have amphiphilic properties, but there is no disclosure in D2 of any antiperspirant property of those compounds, nor is there any hint in D2 that such a property would be present in the specific combinations of compounds now identified in the claims. According to the examples of the patent in suit, the compositions containing the amphiphilic actives are able to act as antiperspirants in the absence of aluminium chlorohydrate, although the presence of those compounds is not excluded in the claims. Nevertheless, D2 contains no suggestion that effective antiperspirant compositions could be obtained by using the specific combinations of compounds now being claimed whether instead of or together with aluminium chlorohydrate. Therefore, the subject-matter of claim 1 is inventive over D2.

The other documents on file are less relevant than D2, so that claim 1 is inventive over those, or combinations of those with D2, as well.

As claims 2 to 10 and those indicated as 12 and 13 are dependent from Claim 1, the same conclusion is valid for those claims as well, so that the requirements of Article 56 EPC are fulfilled.

*Further issues*

16. The description has yet to be adapted to the claims of the third auxiliary request and the dependent claims indicated as 12 and 13 should be renumbered to 11 and 12, respectively.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is remitted to the first instance with the order to maintain the patent on the basis of the third auxiliary request as submitted during the oral proceedings on 9 November 2006 and a description to be adapted thereto.

The Registrar:

The Chairman:

S. Fabiani

S. Perryman