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D E C I S I O N
of 19 May 2005

Case Number: T 0864/02 - 3.3.06

Application Number: 93870142.2

Publication Number: 0634479

IPC: C11D 3/39

Language of the proceedings: EN

Title of invention:

Stable detergent compositions comprising bleaching agents

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponents:

Henkel KGaA
Unilever PLC

Headword:

Water-soluble silicate/PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 83, 56, 99(4), 107, 125

Keyword:

"Party as of right (allowance to raise novelty objection:
yes) "

"Inventive step (main request, auxiliary requests 1 to 3) - no"

"Sufficiency of disclosure (auxiliary request 4) - no"

Decisions cited:

J 0020/85, J 0003/90, T 0018/81, T 0094/84, T 0716/89,
T 0839/92, G 0001/86, G 0002/91, G 0009/91, G 0009/92

Catchword:

-



Case Number: T 0864/02 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 19 May 2005

Party as of Right:
(Opponent 01)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 20 June 2002
rejecting the opposition filed against European
patent No. 0634479 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Krasa
Members: G. N. C. Raths
J. H. Van Moer

Summary of Facts and Submissions

I. This appeal lies from the decision of the Opposition Division to reject the two oppositions filed against the European patent No. 0 634 479, which contained 12 claims, Claim 1 reading:

"1. A granular detergent composition comprising
(i) a granular component comprising a clay and water-soluble silicate; and
(ii) a granular component comprising a bleaching agent characterised in that the bleaching agent is chosen from the group comprising alkalimetal percarbonate peroxyacid, perimidic acid or combinations of these."

II. The two notices of opposition were both based on the grounds of Article 100(a) EPC for lack of novelty and inventive step (Articles 52(1), 54(2) and 56 EPC), the opposition filed by opponent 02 (hereinafter appellant) being also based on the grounds of Article 100(b) EPC for lack of disclosure of the invention according to Article 83 EPC. *Inter alia*, the following documents were cited in support:

(1) WO-A-94 07990

(2) WO-A-92 06163

III. In its decision the Opposition Division held

- that the requirements of Article 83 were fulfilled:

In particular, the invention was disclosed in a manner sufficiently clear and complete that a skilled person understood

- that the detergent composition comprised at least two granular (i) and (ii); and

- that the term "water-soluble silicate", although relative, was clear enough to be understood because water-soluble silicates were known to the skilled person and exemplified.

Also, the subject-matter of Claim 1 did not lack clarity for the only reason that no amounts were cited.

The Opposition Division further held that the subject-matter of Claim 1 was novel over the cited prior art, in particular over documents (1) and (2). Document (1) would not disclose granules comprising water-soluble silicate and clay, and further granules comprising percarbonate, peroxyacid or perimidic acid. Document (2) would not disclose granules comprising silicate and clay.

With respect to inventive step, document (2) relating to percarbonate stability was regarded as the closest prior art document. Since this document taught to solve the stability problem by controlling moisture and the heavy metal content and did not suggest granules, and since detergent compounds according to document (2) were dry mixed, the Opposition Division held that the addition of silicates to the same granule containing the clay in order to improve the percarbonate stability

in a detergent composition involved an inventive step (Article 56 EPC).

- IV. An appeal was filed against this decision by the appellant. The appellant argued that the problem of percarbonate instability caused by the presence of clay would first not always exist - contrary to what was alleged by the patent proprietor - and secondly not always be solved by adding silicate, and that the claimed solution failed to deliver a workable solution over a large area of the scope of Claim 1. Therefore, this technical solution would not involve an inventive step.

In support of its arguments, under cover of the letter dated 25 October 2002, it filed two series of experimental data called series A and series B which should either prove lack of insufficiency of disclosure according to Article 83 EPC or lack of inventive step (Article 56 EPC).

- V. In its letter dated 9 May 2003 the patent proprietor (hereinafter respondent) argued
- that there was no evidence that the requirements of Article 83 EPC were not met because the base formulation used in the appellant's series A experiments was different from that of the corresponding components in the examples of the patent in suit (page 3, lines 3 to 11);
 - that no reliable conclusions could be drawn from experiments A3 to A23 (final formulations) none of which was a close reproduction of any of the examples of the patent in suit;

- that no save conclusions could be drawn from a comparison of the clay granules A1 with the clay granules A2, both containing some post-added silicate;
- that the appellant's series A examples had therefore to be disregarded as evidence for lack of disclosure according to Article 83 EPC;

As to inventive step it argued

- that the appellant had shown in the series B experiments that silicate in granules according to example B10, fulfilling the requirements of the invention, improved the percarbonate stability over a granule containing no silicate which would be evidence in favour of the patent proprietor;
- that the examples filed by the appellant under its section A could not support any reliable conclusions for the reasons already given.

Under cover of the letter dated 19 April 2005 the respondent filed auxiliary requests 1 to 4, the respective Claims 1 of these requests reading as follows:

Auxiliary request 1

- "1. A granular detergent composition comprising
- (i) clay granules which also contain water-soluble silicate;
 - (ii) alkalimetal percarbonate granules;
 - (iii) surfactant; and
 - (iv) builder

wherein the amount of clay in component (i) is at least 5% by weight of the composition."

Auxiliary request 2

"1. A granular detergent composition comprising
(i) clay granules which also contain water-soluble silicate;
(ii) alkalimetal percarbonate granules;
(iii) surfactant;
(iv) builder; and
(v) water soluble silicate dry mixed with the remainder of the composition, and wherein the dry mixed portion of the water-soluble silicate comprises less than 10% by weight of the granular detergent composition, and
wherein the amount of clay in component (i) is at least 5% by weight of the composition."

Auxiliary request 3

"1. A granular detergent composition comprising
(i) clay granules which also contain water-soluble silicate; and optionally post added water-soluble silicate;
(ii) alkalimetal percarbonate granules which are substantially coated;
(iii) surfactant; and
(iv) builder
wherein the amount of clay in component (i) is at least 5% by weight of the composition."

Auxiliary request 4

"1. Use of water-soluble silicate for improving percarbonate stability in a granular detergent composition comprising

- (i) clay granules;
- (ii) alkalimetal percarbonate granules;
- (iii) surfactant; and
- (iv) builder

wherein the amount of clay in component (i) is at least 5% by weight of the composition and the water-soluble silicate for improving percarbonate stability is in the clay granules."

VI. Opponent 01 did not file an appeal but filed remarks in the capacity of a party to the appeal proceedings as of right according to Article 107 EPC in its letter dated 3 May 2005.

It argued that document (1) was novelty destroying because it disclosed a granular detergent comprising 30 to 80 wt.-% surfactants, 20 to 60 wt.-% mixtures of bentonite and amorphous silicate and 0.5 to 10 wt.-% peroxy bleaching agent (claim 20 in combination with page 14, paragraph 2; page 9, paragraph 1: e.g. peroxy carbonate, diperdodecandiacid, which is a peroxy acid).

Since the granular component (i) according to Claim 1 of the patent in suit comprised clay and silicate, said definition of component (i) did not exclude a bleaching agent; further, since the granular component (ii) comprised a bleaching agent, said definition did not

exclude clay and silicate, granular component (i) being thus interchangeable with granular component (ii).

VII. The appellant, the respondent and opponent 01 took part in the oral proceedings which took place on 19 May 2005. The respondent argued that the novelty objection raised by opponent 01 was not admissible since opponent 01 did not file an appeal and since the admission of the novelty objection at this late stage would be contrary to the Rules of procedure of the Boards of Appeal (RPBA).

VIII. The appellant requests that the decision under appeal be set aside and the patent be revoked in its entirety.

The respondent requests that the appeal be dismissed and that the patent be maintained as granted or, in the alternative, on the basis of any of the Auxiliary Requests filed with the letter of 19 April 2005.

Reasons for the Decision

1. *Procedural matters (Articles 99(44) and 107 EPC)*

1.1 The Board at the beginning of the oral proceedings had to deal with the issue of admissibility of the novelty objection raised by opponent 01 who had not filed an appeal.

At the beginning of the oral proceedings before the Board, the respondent contested the admissibility of the novelty objection raised by opponent 01. It argued that novelty was not an appealed issue and, since

opponent 01 did not file an appeal, the novelty objection should be disregarded. To allow opponent 01 to bring its submission into the proceedings would be a substantial deviation from the RPBA.

1.2 The Board does not agree.

1.3 In all the proceedings before the instances of the European Patent Office, the European Patent Convention as well as the decisions of these instances should be taken into consideration.

1.4 According to Article 107, first sentence EPC any party to proceedings adversely affected by a decision may appeal.

Opponent 01, who was entitled to file an appeal but did not do so, is, by virtue of Article 107, second sentence, EPC, party as of right to these appeal proceedings initiated by the appellant.

1.5 According to some case law a non-appealing party as of right does not have the same procedural status in all respects as does an appellant, e.g. it does not have an independent right to continue appeal proceedings if the appellant withdraws its appeal (see G 2/91, OJ 1992, 206, Reasons for the decision, Nos. 5 and 6.1, G 9/92, OJ 1994, 875, Reasons for the Decision No. 8). However, constant case law confirms the right to be heard of all parties to pending proceedings (J 20/85, OJ 1987, 102; J 3/90, OJ 1991, 550; T 18/81, OJ 1985, 166; T 94/84, OJ 1986, 337; T 716/89, OJ 1992, 132).

- This is a specific aspect of the principle that all parties to proceedings pending before the EPO must be treated fairly and equally in similar legal situations. The validity of this principle was confirmed by the Enlarged Board of Appeal (G 1/86, OJ 1987, 447, Reasons for the Decision, No. 13)
- 1.6 The only basic legal difference between an appellant and a party as of right lies in the way they become parties to the appeal procedure. The former by the effect of the notice of appeal, the latter by the effect of Article 107 EPC (second sentence). Once they are parties to the appeal procedure they have exactly the same rights as, in the Board's opinion no limitation can be identified in the EPC and as, on the contrary, the principles of procedural law referred to expressly in Article 125 EPC secure equal treatment.
- 1.7 Further, the fact in itself that a party did not appeal can not imply that it renounced any right it had in the first instance.
- 1.8 The question to be answered in the present case is whether the party as of right can be prohibited from raising a novelty objection under Article 54(1)(2) EPC.
- 1.9 The notice of opposition according to Rule 55(c) EPC contained a statement of the extent to which the European patent was opposed; in particular, a novelty objection based on document (2) was raised. Novelty was an issue in the Opposition Division's decision. Since the party as of right raised a novelty objection based on document (2), this submission lies within the framework of the opposition procedure. Had the

appellant raised this novelty objection, it would have been admissible. The party as of right should enjoy the same right as the appellant. The Board decides to deal with the novelty objection raised by opponent 01.

1.10 As to the lateness of the novelty objection, the admissibility lies within the Board's discretionary power under Article 114(1) EPC.

2. *Main request*

2.1 Article 83 EPC

2.1.1 The appellant argued that it would not be possible to manufacture compositions having an improved stability of percarbonate bleach particles.

2.1.2 Examples 1 to 5 and 8 to 10 of the patent in suit exemplify the subject-matter of Claim 1 related to a product, namely a granular detergent composition. For the Board the technical details mentioned in these examples provide a skilled person with enough knowledge to execute the invention and therefore to manufacture a product as claimed.

2.1.3 The requirements of Article 83 EPC are fulfilled.

2.1.4 As will be apparent from this decision, as long as the requests deal with embodiments representing embodiments of product claims, the requirements of Article 83 EPC are fulfilled. However, if the claim refers to a use for improving the stability, the property of improved stability of the obtainable product becomes relevant under Article 83 EPC (see fourth auxiliary request).

2.2 Novelty

2.2.1 Claim 1 of the patent in suit reads as follows:

"1. A granular detergent composition comprising
i) a granular component comprising a clay and water-soluble silicate; and
ii) a granular component comprising a bleaching agent characterised in that the bleaching agent is chosen from the group comprising alkali metal percarbonate, peroxyacid, perimidic acid or combination of these."

2.2.2 The party as of right argued that the subject-matter of Claim 20 of document (2) would anticipate the subject-matter of Claim 1 of the patent in suit since Claim 20 of document (2) read as follows:

"A granular detergent composition....comprises 30 to 80 wt.-% of surfactants
20 to 60 wt.-% of zeolite and/or crystalline layered silicate, smectite, bentonite or mixtures of zeolite, crystalline layered silicates and/or smectite and/or bentonite and/or amorphous silicates and 0,5 to 10 wt.-% peroxy bleaching agents as well as optionally additional detergent ingredients."

As, therefore, each granule may comprise a granular component comprising a clay and water-soluble silicate and a peroxy bleaching agent, the requirements of Claim 1 of the patent in suit would be fulfilled since

one granular component (i) could be considered as comprising a clay and water soluble silicate (and a peroxy bleaching agent) and

another granular component (ii) as comprising a peroxy bleaching (and a clay and water soluble silicate), both granular components being interchangeable.

2.2.3 The Board does not agree.

According to Claim 1 of the disputed patent the bleaching agent is chosen from the group comprising alkali metal percarbonate, peroxyacid, perimidic acid or combination of these.

Claim 20 of document (2) however does not disclose explicitly one of these bleaching agents, but in more general terms a peroxy beaching agent.

In analogy to the rule that a genus does not anticipate a species, the genus "peroxy bleaching agent" does not anticipate one of the individual bleaching agents, namely percarbonate, peroxyacid or perimidic acid.

Therefore the subject-matter of Claim 1 is novel. The requirements of Article 54(1)(2) EPC are met.

2.3 Inventive step

2.3.1 The problem addressed in the patent in suit was to improve the stability of certain bleaching agents in detergent compositions, in particular to improve the stability of percarbonate bleach particles (page 2, lines 3 to 4).

Percarbonate as an alternative to perborate is a perhydrate which dissolves readily in water, is weight efficient and, after having released its available oxygen, provides a useful source of carbonate ions for detergency purposes. One problem is that percarbonate is less stable in granular detergents than perborate. Its stability problem is more apparent when water-insoluble aluminosilicates and/or clays are present in the composition (page 2, lines 6 to 10).

- 2.3.2 The improvement of percarbonate stability so as to make it a viable component of detergent formulations was also addressed in document (2) (page 2, lines 19 to 21).

Document (2) is therefore an appropriate starting point for evaluating inventive step.

- 2.3.3 According to Document (2), the weight percentage of the original percarbonate remaining after 28 days storage without being decomposed in closed wax laminated cardboard cartons at 32°C and 80% relative humidity was at least 60% when the solid laundry detergent composition contained *inter alia* less than 25 ppm total of iron, copper and manganese ions and had an equilibrium relative humidity of not more than 30% as measured by a solid state hygrometer in the vapour phase over the composition in a closed container at 32°C (page 4, lines 14 to 19).

The performance rating in stability of percarbonate bleach particles of the patent in suit was done in qualitative terms only (best, good, poorer). Thus, a reliable comparison with the quantitative values given

in document (2) (in terms of % of the original available oxygen level after 1, 2, 3 or 4 weeks) was not possible.

- 2.3.4 Consequently no beneficial effect can be acknowledged for the compositions of Claim 1 of the patent in suit.

Before defining the problem to be solved in the light of the teaching of document (2), the Board considered the comparative examples supplied by the appellant.

- 2.3.5 At stake was a comparison of the percarbonate stability obtained when water-soluble silicate was added to a bleach particle comprising clay with the stability of bleach particles to which no water-soluble silicate was added.

The technical background for achieving percarbonate stability can be summarized as follows: Instead of controlling the metal ion content and the moisture content according to the technical solution of document (2), the stability of percarbonate bleach particles according to the patent in suit was obtained with a detergent composition comprising two granular components, the one (i) comprising a clay and water-soluble silicate; and the other (ii) comprising a bleaching agent chosen from the group comprising alkali metal percarbonate, peroxyacid, perimidic acid or a combination of these.

- 2.3.6 The appellant had filed two series of experimental data, the series A and the series B (B1 to B5 and B6 to B10). The percarbonate stability was determined by measuring

the available oxygen content (AvOx) of the formulations before and after storage.

The experiments of the A series were contested by the respondent as not being a true reproduction of the invention examples (see point V, above). Since they are not taken into consideration by the Board for deciding this case, there is no need to discuss the accuracy of reproduction of the experiments of the A-series.

The results of the experiments of the B series (storage in card boxes at 37°C and 70% relative humidity, no indication of the duration period) were split up in base formulations B1 to B4 containing as a builder zeolite A24 and in base formulations B5 to B9 containing as a builder zeolite 4A.

Example B1, an embodiment not representing the invention, did not contain clay and water-soluble silicate in the base formulation; the clay granule was separately added and did not contain water-soluble silicate either; the AvOx loss was 0% and thus the best result of the B1 to B5 experiments; according to the patent in suit the AvOx result of the composition according to example B1 should however be the worst.

Example B1 is a proof that clay granules have no detrimental effect on percarbonate stability, contrary to what was alleged in the patent in suit (page 2, lines 9 to 10).

The composition of example B4 was an embodiment according to the invention and fulfilling the requirements of Claim 1, i.e. the granular detergent

contained 13,4 weight % of clay and 5,5 weight % water soluble silicate of the base formulation; the base concentration was 85,3 weight % of the final composition.

The AvOx loss was 29%, i.e. the worst result of the B1 to B4 experiments.

Example B9, an embodiment fulfilling also the requirements of Claim 1, had an AvOx loss of 21%, i.e. the second worst result in the B6 to B9 experiments.

However according to the patent in suit B4 and B9 should have produced the best results. In other words, a good percarbonate stability was not always obtained, or, the problem of obtaining a good percarbonate stability was not credibly solved with the detergent compositions over the whole scope of Claim 1.

It follows therefrom that clay particles do not always cause a percarbonate stability problem. Hence contrary to what is stated in the patent in suit (page 2, lines 9 and 10), the stability problem does not always exist.

- 2.3.7 The respondent contested the results of the experimental data supplied by the appellant, however not because the indication about the storage duration - (assumed to be the same for all examples and, therefore, not disputed) - was missing. The respondent argued that the AvOx measurements would not be accurate enough and, therefore, statistically not significant. The variation of the AvOx values before and after the storage would be too small.

2.3.8 The Board does not agree with the respondent's arguments for the following reasons:

The rating according to the patent in suit was "poorer than", "good" and "best" (page 10, lines 10, 12 and 39).

Both parties being experts in the present technical field are aware that the percarbonate activity test method is known as a very sensitive one; for instance, the titration must be carried out fairly rapidly and no more thiosulfate solution added after the end point, as air oxidation brings back the yellow colour (see Note 5 of the "Percarbonate activity test method" annexed to the grounds of appeal under cover of the letter dated 22 October 2002). Whereas the respondent relied only on relative qualitative evaluations, the appellant relied on quantitative results. Quantitative results, even if tainted with some experimental problems of accuracy, are more reliable than the qualitative results, because quantitative results are less subjective.

Applying a stricter standard of evaluation to the appellant than to the respondent would be unfair because of lack of equal of treatment of the parties.

2.3.9 Therefore, the evidence supplied by the appellant which has submitted quantitative results has been taken into consideration by the Board.

This means that the problem underlying the patent in suit in view of document (2) can only be defined as to find an alternative granular detergent composition. This problem was solved with a granular detergent

composition having at least one component type which contains clay (or water-insoluble aluminosilicates) (see examples 8 to 10 of the patent in suit).

2.3.10 The question remains to be decided whether this solution involved an inventive step or not.

All the ingredients (clay, water-soluble silicate, the bleaching agents) (see Claim 1) are usual in the art and since a specific technical effect can not be recognised an inventive step cannot be acknowledged.

The subject-matter of Claim 1 does not fulfil the requirements of Article 56 EPC.

3. *First, Second and Third Auxiliary Requests*

3.1 Articles 54, 83, 84 and 123 EPC

The Board is satisfied that the subject-matter of all these requests meets the requirements of Articles 83 (see points 2.1, 2.1.1 to 2.1.3), and that Claim 1 of each of these requests meets the requirements of Articles 84 and 123(2) EPC. The Board is also satisfied that the subject-matter of Claim 1 of each of these requests is novel (Article 54 EPC).

A detailed reasoning is not necessary since all these requests fail for other reasons.

3.2 Inventive step

3.2.1 Claim 1 of the First Auxiliary Request

Claim 1 of the first auxiliary request differs *inter alia* from Claim 1 of the main request in that the bleaching agent is restricted to alkalimetal percarbonate granules and that the amount of clay in component (i) is at least 5% by weight of the composition.

Examples B4 and B9 are still embodiments representative for Claim 1 of the first auxiliary request since the base formulation contains 13,4% clay i.e. at least 5% by weight of the composition since the base concentration is 85,3 weight % of the final composition.

Example B4 had the worst performance of the B1 to B5 experiments, and example B9 had the second worst performance of the experiments B6 to B10.

It is referred to the reasoning under points 2.3.1 to 2.3.10 which applies *mutatis mutandis*. As has been concluded under points 2.3.9 and 2.3.10, the provision of an alternative granular detergent composition having at least one component type which contains clay (or water-insoluble aluminosilicates) does not contribute an inventive step, the ingredients and their amounts being usual and not amounting to a specific technical result.

The subject-matter of Claim 1 does not fulfil the requirements of Article 56 EPC.

3.2.2 Claim 1 of the Second Auxiliary Request

The subject-matter of Claim 1 of the second auxiliary request differs in essence from that of Claim 1 of the first auxiliary request in that water-soluble silicate was dry mixed with the remainder of the composition wherein the dry mixed portion of the water-soluble silicate comprises less than 10% by weight of the granular detergent composition.

Examples B5 and B10 represent embodiments of Claim 1 insofar as the concentrations of the ingredients are concerned; in both experiments 3,2 weight % of water soluble silicate had been post added; even if the performance of B10 had the best rating (4% loss of AvOx), that of example B5 however had a rating of 12% loss of AvOx, the rating of 29% loss of AvOx of example B4 being the worst of the B6 to B10 experiments, although B4 represented an embodiment according to the invention; example B1 was with an AvOx rating of 0% loss the best of the B1 to B5 experiments but B1 did not represent an embodiment according to the invention.

The reasoning under 2.3.1 to 2.3.10 applies *mutatis mutandis* to Claim 1 of the second auxiliary request.

As to the feature regarding dry mixing, this is a technical measure known in the art (document (2), page 17, lines 14 and 15) and does not provide a particular technical effect. Therefore this process step cannot contribute an inventive step.

The subject-matter of Claim 1 does not meet the requirements of Article 56 EPC.

3.2.3 Claim 1 of the Third Auxiliary Request

The subject-matter of Claim 1 of the third auxiliary request differs from that of Claim 1 of the first auxiliary request in that the alkalimetal percarbonate granules are substantially coated.

The reasoning under 2.3.1 to 2.3.10 applies *mutatis mutandis* to Claim 1 of the third auxiliary request since also the percarbonate used in the experiments B1 to B5 and B6 to B10 was coated with sodium chloride (page 11 of the letter dated 25 October 2002 and its annex, line 6 below the table).

The coating of percarbonate is a technical measure known in the art (document (2), page 18, lines 7 to 11); no particular technical effect results therefrom. Therefore this process step cannot contribute an inventive step.

The subject-matter of Claim 1 does not meet the requirements of Article 56 EPC.

4. *Fourth Auxiliary Request*

4.1 Claim 1

The subject-matter of Claim 1 differs from that of Claim 1 of the first auxiliary request in that it is a use claim for **improving** percarbonate stability in a granular detergent composition.

4.2 Articles 84 and 123 EPC

The Board is satisfied that Claim 1 meets the requirements of Articles 84 and 123(2) EPC. A detailed reasoning is not necessary since the request fails for other reasons.

4.3 Article 83 EPC

Claim 1 is directed to the use of water-soluble silicates **for improving** the percarbonate stability in a granular detergent composition.

The extent of disclosure which the description must contain depends upon the nature and extent of the invention which is claimed.

It is the invention which must be sufficiently disclosed that is the claimed subject-matter which gives rise to the technical effect. Claim 1 indicates clearly the purpose of the use: **the improvement of the percarbonate stability.**

The claimed invention, i.e. the use of water-soluble silicates **for improving** the percarbonate stability, must be capable of performance by a skilled person without undue burden either on the basis of the information in the application on its own or supplemented when appropriate by information which is part of the common general knowledge of such a skilled person.

The measures to be taken according to Claim 1 are

1. the amount of clay in compound (i) is at least 5 weight % of the composition, and
2. the water-soluble silicate is in the same granule as the clay.

However these two concrete measures are not sufficient to lead to an improved percarbonate stability.

It results from the data submitted by the appellant that the presence of water-soluble silicate in the same granule as the clay, even if the amount of clay is at least 5% by weight, is not a guarantee that the percarbonate stability is improved. Composition B4 while meeting the requirements of Claim 1 of the fourth auxiliary request for instance had the worst performance in the B1 to B5 series.

As the description is silent on measures to be taken in such a case, there is a lack of disclosure for carrying out the invention by a skilled person in such a manner to achieve **an improvement** in percarbonate stability as required by Claim 1, especially also because there is no reference basis to be compared with when the improvement has to be evaluated.

A claim directed to the use of water-soluble silicates **for improving** the percarbonate stability in a granular detergent composition is not supported by the description and therefore the invention is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

The requirements of Article 83 EPC are not met.

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