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**Datasheet for the decision
of 14 December 2006**

Case Number: T 1285/04 - 3.2.05

Application Number: 97308388.4

Publication Number: 0839495

IPC: A47L 15/44

Language of the proceedings: EN

Title of invention:
Delivery device

Patentee:
UNILEVER N.V., et al

Opponent:
AEG Hausgeräte GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 84

Keyword:
"Support by the description for the claims on file - no"

Decisions cited:
-

Catchword:
-



Case Number: T 1285/04 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 14 December 2006

Appellant: UNILEVER N.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 31 August 2004
revoking European patent No. 0839495 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: W. Zellhuber
Members: H. Schram
E. Lachacinski

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division posted 31 August 2004 revoking European patent No. 0 839 495 on the grounds that the subject-matter of claim 1 of the main request was not novel (Article 54 EPC) and that the subject-matter of claim 1 of the auxiliary request did not involve an inventive step (Article 56 EPC).

- II. Together with his statement setting out the grounds of appeal filed on 24 December 2004 the appellant filed a set of claims 1 to 13 and requested that the decision under appeal be set aside and that the patent be maintained on the basis of said set of claims 1 to 13. Oral proceedings were requested if the Board intended to decide otherwise.

- III. In a communication dated 1 August 2006 annexed to the Summons to attend oral proceedings scheduled for 14 December 2006 the Board expressed its provisional opinion that it appeared that the subject-matter of claim 1 of the sole request of the appellant submitted on 24 December 2004 did not involve an inventive step (see point 5 of said communication).

In point 6 of said communication the following was stated: "The description has not been brought into conformity with the set of claims currently on file, see for example paragraph [0010]. It therefore does appear that Article 84 EPC, second sentence, is not complied with. It may be noted that the Board can decide only on a request as a whole, i.e. a complete

set of amended claims, description and/or drawings, and that the Board may dismiss the appeal for formal reasons alone".

- IV. In reply to the Summons the appellant informed the Board on 5 October 2006 that the appellant would not be represented at the oral proceedings, that the request for oral proceedings was withdrawn and that it was requested to take a decision on the basis of the contents of the file.
- V. With letter of 25 October 2006, received on 27 October 2006, the respondent (opponent) requested that the appeal be dismissed.
- VI. By a communication dated 7 November 2006, the Board notified the parties that oral proceedings scheduled for 14 December 2006 were cancelled.
- VII. Independent claims 1 and 12 of the sole request of the appellant read as follows (amendments with respect to the corresponding claims 1 and 13 as granted have been underlined by the Board):

"1. A delivery device for delivering a dose of washing material into the interior of a washing apparatus at a selected point or stage in the wash cycle which is independent of the overall machine's control system the device comprising:

a housing (2, 4, 102, 104, 202, 204, 302, 304) including means for attachment to the plate tray or cutlery basket of the machine, and defining a chamber for containing the dose of washing material to be delivered, the chamber being selectively openable or

closable for selectively allowing communication between the interior of the chamber and the outside of the housing; and

temperature sensitive actuation means comprising an actuation element (30, 130, 230, 366) whose shape is dependent upon and varies with temperature, which temperature sensitive actuation means is attached to the housing and is constructed and arranged for causing the chamber to be opened from a closed condition at a point or stage in the wash cycle of the apparatus at which a predetermined temperature within the interior of the apparatus is reached,

wherein the chamber includes at least one opening (9, 109, 209) for allowing the selective communication between the interior of the chamber and the outside of the housing, and the device further includes closure means (2a, 2b, 102, 202) for selectively closing or opening the at least one opening in the chamber, the opening of the chamber resulting from the actuation means causing the closure means to move from their closed condition to their open condition at the predetermined temperature, and wherein water or wash liquor within the machine is able to freely dissolve or disperse the washing material contained in the chamber when the chamber is opened."

"12. A method of delivering a dose of washing material into the interior of a washing apparatus at a point or stage in a wash cycle thereof which is independent of the overall machine's control system at which a predetermined temperature within the interior of the apparatus is reached, the method comprising:

providing a delivery device according to any one of the preceding claims;

loading a dose of the washing material into the chamber of the delivery device;
either before or after the preceding loading step, placing the delivery device in the interior of the washing apparatus; and
initiating the wash cycle of the apparatus;
whereby at the point or stage in the wash cycle at which the predetermined temperature within the interior of the apparatus is reached, the temperature sensitive actuation means causes the chamber to be opened from a closed condition, so as to allow communication between the interior of the chamber to the interior of the washing apparatus, and thereby enabling the dose to washing material to be delivered therefrom into the interior of the washing apparatus."

Reasons for the Decision

Support by the description for the claims on file

Article 84 EPC, second sentence, provides that the claims shall be clear and concise and be supported by the description.

In paragraph [0010] of the description of the patent in suit, which starts as follows "*Accordingly, in a first aspect the present invention provides a delivery device ...*", claim 1 of the patent in suit as granted is reiterated verbatim. The description of the patent in suit, being one of the documents on the basis of which the grant of the patent has been requested by the appellant, is not in conformity with claim 1 of the sole request of the appellant, since said claim differs

from claim 1 as granted by the features that are underlined in point VII. above.

In the judgement of the Board, claim 1 on file is thus not supported by the description in the meaning of Article 84 EPC.

The appellant has neither disputed this, nor filed an amended description brought into conformity with the set of claims currently on file, but instead requested a decision on the basis of the file as it stands.

It follows that the sole request of the appellant has to be refused for this reason alone. With this state of affairs there is no need to examine whether the claims meet *inter alia* the requirements of Articles 123 and 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber