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D E C I S I O N
of 29 June 2006

Case Number: T 0120/05 - 3.3.06

Application Number: 95203331.4

Publication Number: 0776966

IPC: C11D 17/04

Language of the proceedings: EN

Title of invention:

Liquid bleaching compositions packaged in spray-type dispenser and a process for pretreating fabrics therewith

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Reckitt Benckiser PLC

Headword:

Liquid bleach/PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

"Novelty (main request and second auxiliary request): no - claimed subject-matter already disclosed in the claims of a prior art document"

"Novelty (first auxiliary request): yes"

"Inventive step (first auxiliary request): no - alleged technical effect not shown throughout the whole scope of claim 1 - obvious optimization"

Decisions cited:

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Catchword:

-



Case Number: T 0120/05 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 29 June 2006

Appellant:
(Patent Proprietor)

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Representative:

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Respondent:
(Opponent)

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Representative:

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 3 December 2004
revoking European patent No. 0776966 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: G. Raths
Members: L. Li Voti
A. Pignatelli

Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division to revoke the European patent No. 0 776 966 concerning liquid bleaching compositions packaged in a spray-type dispenser and a process for pretreating fabrics therewith.

II. In its notice of opposition the Opponent sought revocation of the patent on the grounds of Article 100(a) EPC because of lack of novelty and inventive step of the claimed subject-matter.

The following documents were referred to *inter alia* in support of the opposition:

(1): EP-A-0629694

(4): GB-A-1439361.

III. In its decision, the Opposition Division found that

- the claims according to the main request were novel but lacked an inventive step in the light of the teaching of document (4), e.g. in combination with document (1);

- the claims according to the first and second auxiliary requests lacked an inventive step for the same reasons.

IV. An appeal was filed against this decision by the Patent Proprietor (Appellant).

The Appellant filed with the statement of the grounds of appeal three sets of claims to be considered as main request, and as first and second auxiliary requests, respectively.

Oral proceedings were held before the Board on 29 June 2006.

During the oral proceedings the Appellant filed an amended set of claims replacing the set of claims according to the first auxiliary request submitted with the grounds of appeal.

The set of claims according to the main request comprises independent claims 1 and 10. Claim 1 reads as follows:

"1. A liquid composition packaged in a spray-type dispenser for pretreating fabrics, said composition comprising a peroxygen bleach, a surfactant and a bleach activator."

Claim 10 relates to a process of cleaning fabrics with a composition according to any of claims 1 to 9.

Claim 1 of the set of nine claims according to the first auxiliary request reads as follows:

"1. A process of cleaning laundry with a liquid composition packaged in a spray-type dispenser, said composition comprising a peroxygen bleach, a surfactant

and a bleach activator, said process comprising the steps of dispensing said composition from said spray-type dispenser onto at least a portion of said laundry, allowing said composition to remain in contact with said laundry and then washing said laundry."

Claim 1 according to the second auxiliary request reads as follows:

"1. The use of a liquid composition packaged in a spray-type dispenser for carpet cleaning applications, said composition comprising a peroxygen bleach, a surfactant and a bleach activator."

All requests contain dependent claims 2 to 9 relating to particular embodiments of the claimed composition, process or use, respectively.

V. The Appellant submitted in writing and orally *inter alia* that

- both claims 1 according to the main and to the second auxiliary request were novel over the disclosure of document (1) since this document did not contain a disclosure of all the features of such claims in combination; moreover, claim 1 according to the first auxiliary request was also novel since document (1) did not concern the treatment of laundry;

- as regards the first auxiliary request document (4) represented the closest prior art; however, this document did not concern the same technical problem underlying the invention claimed in the patent in suit, i.e. the improvement of the fabric safety and/or colour

safety of fabrics treated with a peroxygen bleach containing composition; therefore, starting from document (4), the skilled person would have had no incentive for modifying the compositions disclosed in that document, e.g. by adding a bleach activator, in order to achieve the improvements obtained in the patent in suit and shown in the tests submitted with the statement of the grounds of appeal as document (5); moreover, the skilled person, knowing that the addition of a bleach activator would render the bleaching more aggressive also towards the fabric colours, would have refrained from adding such a bleach activator in a process as disclosed in document (4).

VI. The Respondent (Opponent) submitted in writing and orally *inter alia* that

- the claims according to the main and to the second auxiliary request lacked novelty over the disclosure of document (1) since the combination of all the features of claim 1 was disclosed, for example, in the claims of this document;

- document (4) represented the closest prior art document;

- it was obvious for the skilled person to modify the compositions used in document (4) by adding a bleach activator in order to improve their performance;

- the effects shown in the experimental report submitted by the Appellant with the grounds of appeal were automatically achieved by carrying out the previously mentioned obvious modification of the

compositions of document (4) and could thus not support the presence of an inventive step; moreover, the tests filed by the Appellant compared compositions comprising different amounts of hydrogen peroxide and thus did not show that the alleged improvement had been achieved by simply adding a bleach activator;

- the claimed subject-matter thus did not involve an inventive step.

VII. The Appellant requests that the decision under appeal be set aside and the patent be maintained as filed on 9 April 2005 with the grounds of appeal as main request or on the basis of claims 1 to 9 according to the first auxiliary request filed during oral proceedings or on the basis of claims 1 to 9 according to the second auxiliary request filed on 9 April 2005 together with the statement of grounds of appeal.

VIII. The Respondent requests that the appeal be dismissed.

Reasons for the Decision

1. *Main request*

1.1 Article 84 and 123(2) EPC

The Board is satisfied that the claims according to the main request comply with the requirements of Articles 84 and 123(2) EPC.

1.2 Novelty

Claim 1 according to the main request relates to a liquid composition packaged in a spray-type dispenser and comprising a peroxygen bleach, a surfactant and a bleach activator.

Claim 10 of document (1) discloses the use of an aqueous liquid composition according to any of the preceding claims 1 to 6 packaged in a spray device. Claim 5 relates to a composition comprising a mixture of a peracid precursor and hydrogen peroxide, i.e. of a bleach activator and a peroxygen bleach. Moreover, claim 6 relates to any of the precedingly claimed compositions and thus also to the composition of claim 5 comprising additionally a surfactant.

Therefore, the combination of claims 10, 5 and 6 describes a composition comprising all the features of claim 1 according to the main request.

This combination is an explicit alternative envisaged by the wording of the claims and therefore does not amount to a selection of various features from distinct parts of document (1).

The Board concludes thus that the subject-matter of claim 1 lacks novelty.

2. *First auxiliary request*

2.1 Articles 84 and 123(2) EPC

The Board is satisfied that the claims according to the first auxiliary request comply with the requirements of Articles 84 and 123(2) EPC.

2.2 Novelty

Claim 1 according to the first auxiliary request relates to a process of cleaning laundry with a liquid composition packaged in a spray-type dispenser, said composition comprising a peroxygen bleach, a surfactant and a bleach activator, said process comprising the steps of dispensing said composition from said spray-type dispenser onto at least a portion of said laundry, allowing said composition to remain in contact with said laundry and then washing said laundry.

Since document (1) relates to the cleaning of carpets and not of laundry (see page 2, line 3), the Board is satisfied that the subject-matter of claim 1 according to the first auxiliary request is novel.

Therefore, the claims according to the first auxiliary request fulfil the requirements of Articles 54(1) and (2) EPC.

2.3 Inventive step

2.3.1 The technical problem underlying the claimed invention is reported in the patent in suit as the improvement of the fabric safety and/or colour safety of laundry

treated with a peroxygen bleach-containing composition (page 2, lines 19 to 20 and 40 to 42).

None of the cited documents deals exactly with this technical problem; document (1), e.g., relates to the treatment of carpets (see point 2.2 above) and thus is a document which would have not been considered primarily by a skilled person faced with the technical problem mentioned above.

Document (4), however, relates to the use of a peroxygen bleach-containing composition in the pre-treatment of stained laundry (see page 1, lines 8 to 22), i.e. it relates to the same technical field as the invention of claim 1 of the patent in suit.

Therefore the Board, in agreement with all the parties, finds that document (4) is the most reasonable starting point for the evaluation of inventive step of the claimed subject-matter.

Document (4) describes the pre-treatment of stained laundry comprising the steps of applying by a spray-type dispenser a liquid composition comprising a peroxygen bleach and a surfactant onto the stained laundry and thereafter washing the pre-treated laundry (page 1, lines 20 to 26; 53 to 62 and 90 to 93).

The process disclosed in this document differs thus from that of claim 1 only insofar as the used composition does not contain a bleach activator.

2.3.2 The Appellant argued during oral proceedings that the addition of a bleach activator permits the selective reduction of fabric dye damage by maintaining an excellent bleaching on stains and that this effect was allegedly supported by the experimental report (5) filed with the grounds of appeal.

According to said report the composition comprising peroxygen bleach and a bleach activator (H_2O_2 + ATC) causes indeed less fabric dye damage than the composition comprising only the peroxygen bleach H_2O_2 (see colour safety results).

However, the tested composition according to the patent in suit (H_2O_2 + ATC) differs from the tested comparative composition (H_2O_2 only) not only insofar as it comprises a bleach activator but also insofar as it contains much less peroxygen bleach H_2O_2 (4% vs. 7%).

These tests fail thus to compare the performance obtained with a composition as disclosed in the closest prior art, i.e. a composition comprising a peroxygen bleach but not a bleach activator, with that of a composition differing from this one only by the presence of an additional bleach activator.

As also admitted by the Appellant during oral proceedings, the simple addition of a bleach activator to the composition according to document (4) without a reduction of the amount of peroxygen bleach would presumably result in an increase of the bleaching efficiency of the composition also against fabric dyes and thus would cause more fabric dye damage.

Since the selection of particular amounts of peroxygen bleach and bleach activator in order to maintain an equal bleaching of the treated fabric together with a minor damage of the fabric colour is not a feature of claim 1, which instead allows the presence of any possible amount of peroxygen bleach and bleach activator, the experimental tests submitted with the grounds of appeal are not suitable for supporting the presence of the alleged advantage throughout the whole scope of claim 1.

Therefore, in the Board's view, the subject-matter of claim 1 cannot be considered to have solved the alleged technical problem throughout the whole scope of the claim. Therefore, the alleged technical effect has to be disregarded in the determination of the technical problem underlying the claimed invention (see Case Law of the Boards of Appeal of the EPO, 4th edition, 2001, point 6.9.2 on page 125).

The technical problem underlying the claimed invention has thus to be reformulated in simpler terms as the provision of an alternative process providing an optimized bleaching efficiency on stained laundry.

The Board is satisfied that this technical problem has been solved by means of the claimed process.

- 2.3.3 As it was known to the skilled person that a bleach activator enhances the performance of peroxygen bleaches on stains, the Board finds that it was obvious for the skilled person to try to optimize the bleaching performance of the compositions of document (4) by adding a bleach activator.

Moreover, there was no prejudice in the prior art preventing the skilled person from attempting to optimize the bleaching efficiency of the compositions of document (4) over coloured stains by adding a bleach activator.

The Board notes, for example, that the claimed process is, for example, not limited to the treatment of coloured fabrics but includes the treatment of white fabrics for which no precaution has to be taken against fabric dye damage.

Therefore, the Board concludes that the subject-matter of claim 1 according to the first auxiliary request does not involve an inventive step and, therefore, claim 1 does not fulfil the requirements of Article 56 EPC.

3. *Second auxiliary request*

Claim 1 according to the second auxiliary request relates to the use of a liquid composition packaged in a spray-type dispenser for carpet cleaning applications, said composition comprising a peroxygen bleach, a surfactant and a bleach activator.

Since the combination of claims 10, 5 and 6 of document (1) discloses the same composition used in claim 1 according to the second auxiliary request (see point 1.2 above) and claim 10 of this document discloses also the use of such a composition for the cleaning of carpets, the subject-matter of claim 1 according to the second auxiliary request lacks novelty.

Therefore, claim 1 does not comply with the requirements of Articles 54(1) and (2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

G. Rath