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**Datasheet for the decision
of 12 December 2006**

Case Number: T 0158/05 - 3.2.07

Application Number: 97202674.4

Publication Number: 0899208

IPC: B65D 75/06

Language of the proceedings: EN

Title of invention:

Detergent tablets-package combination

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Unilever PLC

Headword:

-

Relevant legal provisions:

EPC Art. 56

EPC R. 64(a), 65(2)

Keyword:

"Correction of name of appellant before end of time limit for
appeal - yes"

"Inventive step - no"

Decisions cited:

-

Catchword:

-



Case Number: T 0158/05 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 12 December 2006

Appellant: Unilever PLC
(Opponent) Colworth House
Sharnbrook
Bedford MK44 1LQ (GB)

Representative: Hardy, Susan Margaret
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Respondent: THE PROCTER & GAMBLE COMPANY
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Representative: Mather, Peter Geoffrey
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
14 December 2004 concerning maintenance of
European patent No. 0899208 in amended form.

Composition of the Board:

Chairman: H. Meinders
Members: P. O'Reilly
C. Holtz

Summary of Facts and Submissions

- I. Opposition was filed against European patent No. 0 899 208 as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step) and Article 100(b) EPC (insufficiency of disclosure).

The opposition division decided to maintain the patent in accordance with the auxiliary request with date of 14 December 2004.

- II. The appellant (opponent) filed an appeal against that decision.

- III. The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent (proprietor) requested that the appeal be dismissed.

- IV. Oral proceedings were held before the Board on 12 December 2006.

- V. The independent claim of the patent as maintained reads as follows:

"1. A packaged product comprising the combination of a stack of tablets (1) with a packaging system containing the stack of tablets (1), whereby the packaging system comprises re-closing means, characterised in that the tablets comprise a bleaching agent and the packaging system is formed from a mono-layer, co-extruded or laminate material (2) having a Moisture Vapour Transfer Rate of less than 20g/m²/day measured at 40°C and 75%

Equilibrium Relative Humidity, and whereby the packaging material (2) is resilient and comprises at least a micro-hole in the resilient material (2) so that gas is evacuated out of the packaging system if pressure builds up within the packaging system."

VI. The documents cited in the present decision are the following:

D1: US-A-4 253 842

D2: WO-A-92/20593

D3: EP-A-0 634 484

D10: EP-A-0 490 558

VII. The arguments of the appellant may be summarised as follows:

(i) The name of the appellant was given incorrectly as "Unilever et al." on the original notice of appeal dated 3 February 2005, but the correct name was given within the time limit for filing the notice of appeal. The original deficiency was a typographical error and it was the intention to file the appeal in the name of Unilever PLC as evidenced by the notice of opposition. The letter of 11 February 2005 giving the correct name was intended to be a request for correction even if the letter did not explicitly refer to the relevant rules.

(ii) The subject-matter of claim 1 of the patent as maintained amended in accordance with the decision of the opposition division lacks an inventive step. The nearest prior art document is D3.

Claim 1 is distinguished over the disclosure of D3 in that the claim specifies a stack of tablets and that the resilient material includes one micro-hole. The claim specifies the moisture vapour transfer rate at a temperature and humidity which are slightly different to those mentioned in D3. However, the amount of overlap of the range disclosed in D3 with the range specified in claim 1 is so great that they must still overlap with a small change in the measurement conditions. It could also be considered that D3 discloses the package including tablets since the term is undefined in claim 1 and could include mini-tablets which would not be distinguishable from the various forms of agglomerates disclosed in D3 (flakes, prills, marumes, noodles ,etc.).

The problem to be solved by the provision of at least one micro-hole in the resilient material is to allow excess gas to evacuate without allowing moisture to enter. This requirement forms a one-way street leading to the solution set out in D10 wherein such a micro-hole is provided to solve this problem. Although D10 is directed to a package for foodstuff there is a reference in the patent in suit to a prior art document which also discloses a package for a foodstuff. This reference was already contained in the application as filed. The feature of the stack of tablets makes no technical contribution to solving the problem of the excess gas though it may solve a partial problem.

(iii) Also, starting from D1 the subject-matter of claim 1 lacks an inventive step.

VIII. The arguments of the respondent may be summarised as follows:

- (i) The respondent has no comment regarding the request for correction of the name of the appellant.
- (ii) The subject-matter of claim 1 of the patent as maintained amended in accordance with the decision of the opposition division involves an inventive step.

The subject-matter of claim 1 is distinguished over the disclosure of D3 at least in that there is a stack of tablets and in the provision of a micro-hole. It is also not clear that D3 discloses the moisture vapour transfer rate specified in claim 1 since the measurement conditions are different in D3 to those specified in claim 1. Also, D3 does not disclose a re-closable bag since the reference to such a bag is of the type made by a patent draftsman not wishing to exclude any possible application of the invention. There is no motivation to apply the teachings of D3 to a stack of tablets and a re-closable bag. As is explained in the patent in paragraph [0024] granules as disclosed in D3 do not have the same problem due to moisture ingress as tablets which can have their structure softened.

Contrary to the opinion of the appellant there is no one-way street leading the skilled person from D3 to D10. From column 8, lines 14 to 20 of D1 it is known that tablets may be treated with a paraffin or resin coating to avoid exposure to moisture. Such a solution would avoid the need to consider D10 since it prevents the original cause of the problem, i.e. exposure to moisture.

(iii) The subject-matter of claim 1 is inventive even when taking D1 as the nearest prior art.

Reasons for the Decision

1. *Correction of the name of the appellant*

1.1 The notice of appeal was filed with a fax dated 3 February 2005 in the name of "Unilever et al." and stated that "The Applicants (*sic*) hereby file a notice of appeal...". In a further fax dated 11 February 2005 the appellant stated that "Further to my letter of 3 February 2005, the Appellant is Unilever PLC...". This second fax was filed still within the time limit for filing the notice of appeal. By a further fax dated 11 December 2006 the appellant requested a correction of the name of the appellant to "Unilever PLC" under Rules 64(a) and 65(2) EPC. In the opinion of the Board the letter of 11 February 2005 already effectively constituted a request for correction. Since that letter referred back to the previous letter of 3 February 2005 and was filed within the time limit for appeal this means that the notice of appeal was filed by a party to the proceedings in the first instance within the time

limit for filing the notice for appeal. Thus no question has arisen under Rule 64(a) EPC or under Rule 65(2) EPC. The appeal is admissible.

2. *Inventive step*

2.1 The closest prior art is represented by D3. D3 discloses a packaged product comprising the combination of a product with a packaging system containing the product, whereby the packaging system comprises re-closing means, wherein the product comprises a bleaching agent and the packaging system is formed from a mono-layer, co-extruded or laminated material having a moisture vapour transfer rate of less than 20 g/m²/day measured at 40°C and 75% equilibrium relative humidity, and whereby the packaging material (2) is resilient.

2.1.1 With regard to the re-closing means the respondent argued that although D3 states that "reclosable bags/pouches are encompassed by the present invention" (cf. page 4, line 58 to page 5, line 1) this is just a reaction of the draftsman of that patent to mention everything. The Board, however, cannot agree since the statement in D3 is unequivocal in this respect and the reasons for making the statement are unknown.

With regard to the moisture vapour transfer rate the ranges disclosed in D3 are almost identical with those specified in claim 1 though the temperature and humidity values used for determining the ranges are slightly different. The claim specifies 40°C and 75% equilibrium relative humidity whereas D3 mentions 35°C and 80% humidity. It is quite clear that, for instance, the lower end of the range disclosed in D3 which is 1

g/m²/day would still be well below the maximum of 20 g/m²/day specified in claim 1 when measured under slightly changed conditions of 40°C and 75% equilibrium relative humidity. The Board is therefore satisfied that this feature of claim 1 is disclosed in D3.

The respondent further argued that the feature of the tablets is disclosed in D3 since there is in the document a reference to the detergent particles being in the form of "flakes, prills, marumes, noodles, ribbons, but preferably take the form of granules". The term 'tablet' normally means a relatively large piece of matter which has been formed into a specific shape. Moreover, the claim specifies a stack of tablets which means that the tablets must have a shape which allows a stack to be formed. The shapes mentioned in D3 cannot be considered to be suitable for forming a stack of tablets. The Board therefore considers that this feature of claim 1 is not disclosed in D3.

- 2.2 The subject-matter of claim 1 is distinguished from the disclosure of D3 in that: (a) the product is a stack of tablets; and in that (b) the packaging material comprises at least a micro-hole in the resilient material so that gas is evacuated out of the packaging system if pressure builds up within the packaging system.
- 2.3 In the opinion of the Board feature a) is obvious to the skilled person. It is well known in the detergent art that the detergent may be formed as powder, as granules or as tablets depending upon the intended use and to suit the preferences of the various consumers. The skilled person would apply a teaching known for granules also to powders and tablets if appropriate. This would

also apply to stacks of tablets, such as are mentioned in D1. The respondent referred to paragraph [0024] of the description of the patent in suit wherein the extra importance of protection against moisture ingress is mentioned which it is indicated does not necessarily apply so acutely to the powder or granular form. This may be seen as an argument that there is a prejudice against applying a teaching which is known with respect to powders or granules to tablets.

The Board cannot agree that it has been shown that such a prejudice exists. First of all the above statement is in the patent and not in an independent document so that it may not be representative of the general view of the skilled person. Secondly, the statement does not indicate that there is no problem with moisture ingress in the case of powders or granules, but just that it is less acute than with tablets. The skilled person would thus also consider applying the teachings of a document concerned with packaging granules to the packaging of tablets but would take extra care with respect to the prevention of moisture ingress.

- 2.4 Feature b), which concerns the provision of at least one micro-hole in the packaging material, solves the problem of the build up of pressure within the package, which can occur if moisture has entered a package containing a bleaching agent, producing gases. This problem would be immediately apparent since the packages would become bloated and attract the attention of the user.

The problem is a general problem concerned with pressure build up. Pressure can build up either by the production of gas within a package or due to heating of gas already

present within the packet which increases the pressure exerted by the gas on the package. Whilst venting is the normal solution to avoid pressure build-up, in the case of detergent tablet this problem must be solved without allowing the ingress of moisture.

- 2.4.1 The skilled person may therefore be expected to consider those situations in which pressure build-up occurs but moisture ingress must be avoided. D10 deals with such a situation. D10 is concerned with packaging for foodstuff wherein the package is to be heated in water without however the water entering into the package. Where the package has been vacuum packed there is no need to puncture the package. If the package has not been vacuum packed then puncturing may be necessary to avoid rupture of the package during heating which may allow water to enter the package. The solution to the problem as proposed in D10 is to provide at least one microperforation which allows gas within the package to escape but prevents water from entering. The size of the microperforation is between 30 and 200 μm (see column 2, lines 21 to 23), which overlaps with the sizes for the micro-hole specified in the description of the patent in suit which is 100 to 1000 μm (see column 5, lines 14 and 15).

The skilled person would thus receive the teaching from D10 to provide at least a micro-hole in the sense of claim 1 of the patent in order to solve the objective problem. Although D3 is concerned with packaging detergents and D10 is concerned with packaging foodstuff the Board considers that there is no prejudice against applying the teaching of D10 to the package of D3 since the problem being solved does not depend on the contents

of the package. Indeed, the description of the patent in suit in column 1, lines 28 to 29 refers to D2 as relevant prior art mentioning that it relates to a packaging system for a food product. This part of the description was also contained in the application as filed.

The skilled person would thus arrive in an obvious manner at the subject-matter of claim 1 of the patent in suit.

- 2.5 Therefore, the subject-matter of claim 1 of the only request does not involve an inventive step in the sense of Article 56 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:

C. Moser

H. Meinders