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**Datasheet for the decision
of 5 October 2006**

Case Number: T 0331/05 - 3.3.06

Application Number: 98933629.2

Publication Number: 0993504

IPC: C11D 11/00

Language of the proceedings: EN

Title of invention:

Production of detergent granulates

Patentee:

UNILEVER PLC, et al

Opponents:

Cognis Deutschland GmbH & Co. KG
The Procter & Gamble Company

Headword:

Detergent granulate production/UNILEVER

Relevant legal provisions:

EPC Art. 84

Keyword:

"Clarity of amended claim 1 (no): wording of the claim allows more than one interpretation having technical sense even taking into account the teaching of the description"

Decisions cited:

T 0728/98, T 0337/95, T 0550/91, T 0227/88, G 0009/91

Catchword:

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Case Number: T 0331/05 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 5 October 2006

Appellant:
(Opponent 02)

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted
20 January 2005 concerning maintenance of
European patent No. 0993504 in amended form.**

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
A. Pignatelli

Summary of Facts and Submissions

- I. The present appeal is from the decision of the Opposition Division to maintain in amended form European patent No. 0 993 504, concerning a process of forming a granular detergent product.
- II. In their notices of opposition Opponents 01 and 02 sought revocation of the patent *inter alia* on the grounds of Article 100(a) EPC, because of lack of novelty and inventive step of the claimed subject-matter.

During the oral proceedings held before the department of first instance on 20 January 2005, the Patent Proprietor filed an amended set of 7 claims according to the third auxiliary request which was then made the main request.

As reported in the minutes of the oral proceedings the Opposition Division considered during an adjournment if the claims according to this request complied with the requirements of Article 84 EPC (see page 3 of the minutes).

Claim 1 of this set of claims reads as follows:

"A process comprising a first stage and a second stage of forming a granular detergent product, the process comprising, in a gas fluidisation granulator, contacting a particulate solid material with a spray of liquid binder wherein the liquid binder comprises an acid precursor of an anionic surfactant and the particulate solids comprise an inorganic alkaline

material, whilst fluidising the solids in the granulator with at least one gas stream, characterised in that the gas temperature is controlled so as to be increased during the first stage of the process when fluidisation and spraying are in progress so as to increase the temperature of the fluidising particulate solid material and the temperature of the fluidising particulate solid material is higher during the first stage of the process than during the second stage of the process, after the first stage, and the gas temperature is higher during the first stage of the process than during the second stage of the process."

Dependent claims 2 to 7 relate to particular embodiments of the claimed process.

III. In its decision, the Opposition Division found that the claims according to then pending main request complied with the requirements of the EPC.

IV. An appeal was filed against this decision by Opponent 01 (Appellant).

Oral proceedings were held before the Board on 5 October 2006.

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

- claim 1 was not a simple combination of dependent claims of the granted version but contained a combination of features which had not been the subject-matter of the granted claims;

- therefore, it was admissible to examine the compliance of this claim with the requirements of Article 84 EPC;
- it was not clear from the wording of claim 1 at which point of the process the first stage and the second stage started or ended;
- it was not clear if the gas temperature mentioned in claim 1 was the gas inlet temperature or the temperature of the gas within the fluidized bed;
- it was not clear if the temperature of the gas would have only to increase to a peak temperature during the first stage or could also decrease after having reached a peak temperature;
- it was not clear if the temperature of the fluidized particulate material and of the gas in the second stage had to be lower than any respective temperature in the first stage and thus also lower than the respective initial temperature or if the second stage would start when both temperatures decreased after having reached a peak in the first stage;
- claim 1 was thus unclear and contravened the requirements of Article 84 EPC.

VI. The Respondents (Patent Proprietors) submitted in writing and orally *inter alia* that

- the objections raised under Article 84 EPC were inadmissible;

- the gas temperature mentioned in claim 1 was to be understood as the gas inlet temperature, since this was the only gas temperature which could be controlled;
- the gas temperature had to be increased in the first stage so that the temperature of the particulate bed exceeded that obtained because of the exothermic reaction;
- the gas and particulate bed temperatures in the second stage had to be lower than any respective temperature existing in the first stage;
- the temperatures in the first stage could reach a peak and then decrease before starting the second stage;
- though the wording of claim 1 covered several options, this did not render the claim unclear;
- claim 1 meant what it said, interpreted as necessary by the description, and complied thus with the requirements of Article 84 EPC.

VII. In the communication dated 18 November 2005, the Board informed the parties in writing *inter alia* that the objections raised under Article 84 EPC in the statement of the grounds of appeal appeared admissible.

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

The Respondent requests that the appeal be dismissed.

Reasons for the Decision

1. Article 84 EPC

- 1.1 It is established jurisprudence of the Boards of Appeal of the EPO that, in order to ensure legal certainty, a claim must clearly define the subject-matter for which protection is sought (see T 728/98, OJ EPO 2001, 319, point 3.1 of the reasons for the decision as well as T 337/95, OJ EPO 1996, 628, points 2.2 to 2.5 of the reasons for the decision).

Since non-compliance with the requirements of Article 84 EPC is not a ground for opposition under Article 100 EPC, an objection under Article 84 EPC can only be considered during opposition proceedings if it arises from amendments of the patent as granted (see T 550/91, point 3.1 of the reasons for the decision).

Amendments to a granted claim must thus comply with all the requirements of the EPC, *inter alia* with the requirements of Article 84 EPC (T 227/88, OJ EPO 1990, 292, point 3 of the reasons for the decision and G 9/91, OJ EPO 1993, 408, point 19 of the reasons for the decision).

- 1.2 Claim 1 of the sets of claims found to comply with the requirements of the EPC by the department of first instance consists substantially in a combination of claims 1, 2 and 11 as granted, whereby claim 11 as granted did not contain any reference back to claim 2 but only to claim 1.

Since the set of claims as granted thus did not contain any claim relating to the above combination of features, claim 1 has to be examined as to its compliance with all the requirements of the EPC, including Article 84 EPC.

The objections raised by the Appellant under Article 84 EPC are thus admissible.

1.3 Claim 1 requires that

- the gas temperature is controlled so as to be increased during the first stage of the process when fluidisation and spraying are in progress so as to increase the temperature of the fluidising particulate solid material; and

- both the temperature of the fluidising particulate solid material and the gas temperature are higher during the first stage of the process than during the second stage of the process.

The wording of claim 1 thus requires that fluidization and spraying are in progress throughout the first stage and that in such a stage the gas temperature is controlled. Since, as submitted by the Respondent during oral proceedings, only the gas inlet temperature can be controlled in a fluidization process, the temperature mentioned in the claim is to be understood as being the gas inlet temperature.

The claim requires explicitly that the temperature of the gas is increased during the first stage and thus that it is brought from a lower to a higher temperature

during this stage. Therefore, this wording excludes a first stage of the process wherein the gas temperature is from the start already sufficiently elevated and is not increased further.

Furthermore, the gas temperature increase in the first stage must be such that the temperature of the fluidising particulate solid material, which is defined in the patent in suit as the bed temperature (page 3, lines 11 to 15), is increased. As explained in the patent in suit, this means that the heated gas has to be able not only to remove the heat of the neutralisation reaction occurring between the particulate solid material and the sprayed liquid binder, which step would maintain the bed temperature constant, but to increase the bed temperature further above its initial one (see page 2, lines 38 to 40).

Both the temperatures of the gas and of the bed in the first stage are thus increased from a lower to a higher temperature during an unspecified period of time.

- 1.4 As regards the requirement that both temperatures be higher in the first than in the second stage, the claim does not specify when the first stage ends and the second starts and does not specify if **any temperature** used for the gas and for the bed in the second stage should be lower than **any of the temperatures** of the gas and of the bed existing during the first stage, including the initial temperatures. Therefore, claim 1 does not specify which temperatures of the first stage, e.g. the initial temperatures or the peak temperatures, i.e. the maximum temperatures reached, respectively, by the gas and by the bed, or

the final temperatures, should be considered as reference for those of the second stage.

This wording can thus be interpreted as relating to a process wherein the second stage starts as soon as both temperatures are lower than the peak temperatures in the first stage or, alternatively, lower than the lowest of the respective temperatures during the first stage, or simply to a process wherein the bed and the gas temperatures are lower than the respective final temperatures in the first stage.

Since, according to the claimed process, spraying has to be carried out during the whole first stage and it is not required to be carried out during the second stage, a difference in the starting point of the second stage, i.e. a difference in the length of the first stage, implies also a difference in the period of time during which spraying is carried out.

Depending on the interpretation of the above mentioned wording, the claim could thus be considered to relate to a process wherein spraying can be stopped as soon as the gas and the bed temperatures are below the respective peak temperatures or, alternatively, at a not specified point in time when both the bed and the gas temperatures decrease, or at a much later stage when both temperatures are below the respective lowest one in the first stage (which low temperature may never be achieved according to the previous two cases).

All these interpretations make technical sense but relate to different processes having a different relationship between the bed and gas temperature and the spraying time.

- 1.5 The description of the granted patent suggests only that the gas temperature and the bed temperature are elevated, for example, for a first period at up to 80° C or more and then, at one or more other stages (before or after), they may be lowered, for example, to just above, at, or below ambient (page 2, lines 53 to 57; passage bridging pages 2 and 3) and that the gas and the bed temperature are increased during the neutralisation reaction (page 3, lines 51 to 57). Therefore, the description teaches only that the gas and the bed temperatures are brought to or maintained at an elevated temperature during a certain period of time when the neutralisation occurs and that they may be consistently reduced at a subsequent stage.

The Board thus finds that the teaching of the description, not specifying when the first stage ends or the second stage starts, is consistent with all the possible interpretations of claim 1 reported above and is thus of no help in clarifying the meaning of the claim.

Since the wording of claim 1, also taking into account the teaching of the description, allows more than one interpretation making technical sense, it is not possible to assess with certainty the subject-matter for which protection is sought.

The Board concludes thus that the wording of claim 1 contravenes the requirements of Article 84 EPC.

2. Since the appeal succeeds on these grounds there is no need to discuss the other objections submitted by the Appellant.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke