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**Datasheet for the decision
of 22 May 2007**

Case Number: T 0688/06 - 3.3.06

Application Number: 00986674.0

Publication Number: 1240303

IPC: C11D 3/50

Language of the proceedings: EN

Title of invention:

Laundry and cleaning and/or fabric care compositions

Applicant:

THE PROCTER & GAMBLE COMPANY

Opponent:

-

Headword:

Carried benefit agent/PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 84

Keyword:

"Clarity (no): claim 1 not containing all process features essential for obtaining the product indicated in the claim and for distinguishing the claimed subject-matter from the prior art"

Decisions cited:

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Catchword:

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Case Number: T 0688/06 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 22 May 2007

Appellant:

THE PROCTER & GAMBLE COMPANY
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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 16 December 2005
refusing European application No. 00986674.0
pursuant to Article 97(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. This appeal lies from the decision of the Examining Division to refuse European patent application no. 00 986 674.0, relating to laundry and/or cleaning and/or fabric care compositions.
- II. In its decision, the Examining Division found that the subject-matter of claim 1 of the then pending set of claims lacked novelty and inventive step over the cited prior art.
- III. An appeal was filed against this decision by the Applicant (Appellant).

Following the Board's communication dated 3 November 2006, the Appellant submitted with the letter of 10 January 2007 an amended set of claims, claim 1 of which related to a laundry and/or cleaning and/or fabric care composition comprising a perfume composition as benefit agent carried with a carrier selected from polymers which have chemically reacted with a benefit agent which is a perfume ingredient, components which have chemically reacted with a benefit agent which is a perfume ingredient, and mixtures thereof, wherein the carried benefit agent had a specified viscosity.

With the annex to the summons to oral proceedings dated 23 January 2007 the Board informed the Appellant that the subject-matter of claim 1 appeared to lack clarity for the reasons set forth in the previous Board's communication dated 3 November 2006.

IV. In reply to the summons to attend oral proceedings the Appellant submitted under cover of the letter dated 20 April 2007 arguments discussing the Board's communication and three sets of amended claims to be considered as main request and first and second auxiliary requests, respectively.

With a fax received at the EPO on Friday 18 May 2007 after business hours, at 15.39 h, the Appellant submitted further arguments and seven new sets of claims to be considered as main request and auxiliary requests 1 to 6, respectively.

The new claims were submitted to the Board on Monday 21 May 2007, i.e. one day before oral proceedings, which were held on Tuesday 22 May 2007.

During the oral proceedings the Board informed the Appellant of its intention to reject the requests submitted with the fax of 18 May 2007 as inadmissible since they had been filed very late and did not overcome at first sight the objections mentioned in the Board's communication.

Thereafter the Appellant withdrew all previous requests and submitted an amended set of 21 claims as sole request.

V. The independent claim 1 of the set of claims filed by the Appellant during oral proceedings reads as follows:

"1. A method of making a laundry composition in solid form comprising a detergent and/or surfactant ingredient and a benefit agent which is a perfume

composition, said benefit agent being carried with a carrier which is a polymer which has chemically reacted with a perfume ingredient or a component which has chemically reacted with a perfume ingredient, wherein the weight ratio of the benefit agent and the carrier is from 0.5:1 to 5:1, characterised in that the method comprises steps a) mixing the benefit agent with the carrier to form a carried benefit agent which has a viscosity of at least 400 cps at 20°C, b) mixing the carried benefit agent with a solid granulation agent, and c) incorporating the carried benefit agent into the laundry composition".

Claims 2 to 17 relate to particular embodiments of the claimed method and claims 18 to 21 relate to particular applications of the laundry composition made according to the previous claims.

VI. The Appellant submitted during oral proceedings *inter alia* that

- step (a) of the method of claim 1 described the essential features for solving the technical problem underlying the invention;

- step (b) of claim 1 related to a granulation step of the carried benefit agent with the solid granulation material;

- step (c) was a conventional step involving the incorporation of the product of step (b) by dry-addition into the laundry solid composition;

- the embodiments described in claims 12 and 13 were part of step (b) of claim 1;
- the wording of the claims would have been unambiguously understood by the skilled person by taking the description of the application into account;
- therefore the claims complied with the requirements of Article 84 EPC.

VII. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 21 according to the main request filed during oral proceedings.

Reasons for the Decision

1. Clarity

1.1 According to Article 84 EPC, the claims shall clearly define the matter for which protection is sought. The ratio legis of this provision is to ensure legal certainty. In their jurisprudence, the Boards of Appeal of the EPO have further specified which conditions should be met for a claim to be clear. In particular, the claim should indicate all the features which are essential for solving the technical problem underlying the invention and for distinguishing the claimed subject-matter from the prior art (see Case Law of the Boards of Appeal of the EPO, 5th edition, 2006, II.B.1.1.3 on page 189).

- 1.2 Claim 1 relates to a method of preparation of a solid laundry composition which must comprise **a perfume composition (benefit agent) carried with a polymer or a component which has chemically reacted with a perfume ingredient.**

This method of preparation comprises according to the wording of claim 1 a step (a) of mixing a perfume composition with a polymer or a component which has chemically reacted with a perfume ingredient as a carrier to form a carried perfume composition having a viscosity of at least 400 cps at 20°C, a step (b) of mixing the carried perfume composition, i.e. the product of step (a), with a solid granulation agent, and a step (c) of incorporating the carried perfume composition, i.e. the product of step (a) into the laundry composition.

- 1.3 It is undisputed that step (a) leads to the formation of a carried perfume composition in the form of a viscous liquid and that this step describes the features which are indicated in the description of the application as being essential for solving the underlying technical problem.

However, since claim 1 relates to a method of making a specific product, the remaining process steps characterizing the method of claim 1 should indicate the further features which are essential for obtaining a product as indicated in the claim, i.e. a **solid laundry composition comprising a perfume composition (benefit agent) carried with a polymer or a component which has chemically reacted with a perfume ingredient.**

1.4 The mixing step (b) does not specify the mixing conditions to be used. Moreover, an agglomeration step is the subject-matter of dependent claim 12 only and the description of the application indicates such a step as being only a preferred embodiment (see page 30, lines 4 to 9 and page 37, lines 1 to 8).

The Board notes that the description teaches that the preferred agglomeration step should be carried out by first dispersing the viscous carried perfume composition in a liquid carrier dispersing material (page 37, lines 1 to 8) and then agglomerating the resulting liquid, i.e. the agglomeration step should not be carried out directly with the carried perfume composition of step (a) of claim 1 as encompassed by step (b) discussed hereinbefore, but a dispersion step should take place before agglomeration.

Furthermore, such a step of dispersing the viscous carried perfume composition of step (a) in a **liquid** carrier dispersing material is the subject-matter of dependent claim 13 only. However, since this claim is directly dependent also on claim 1, it is incompatible with the wording of claim 1 according to which the viscous carried perfume composition is mixed with a **solid** granulation agent without further dispersion in another liquid as explained above.

Therefore, in the Board's view, step (b) does not relate necessarily to an agglomeration step, as argued by the Appellant during oral proceedings.

1.5 As regards step (c), the Board notes that claim 1 does not specify that this step relates to the incorporation of the product of step (b) into the solid laundry composition since it relates explicitly to the carried benefit agent which is the product of step (a) according to the wording of the claim. Therefore, this step cannot be interpreted, as argued by the Appellant during oral proceedings, as relating only to the dry addition of the solid product of step (b) to a solid laundry composition.

In fact, this step does not indicate any particular process step and just expresses the trivial requirement that the carried perfume composition has to be incorporated into the final product.

1.6 For the above reasons the Board finds that the process steps explicitly listed in claim 1 do not lead necessarily by themselves to the product required by claim 1.

Moreover, further processing of the carried perfume composition of step (a) is encompassed by the wording of claim 1 including the possibility of additional process steps. Such a further processing, although envisaged, e.g., by claims 12 and 13 and described in the application (see e.g. page 24, lines 15 to 20 as well as the above mentioned passages on pages 30 and 37; point 1.4 above, first paragraph), is not defined in claim 1; furthermore, it could lead to the formation of a carried perfume composition structurally **different** from that of claim 1 according to which the perfume composition should be carried only either with a polymer which has chemically reacted with a perfume

ingredient or with a component which has chemically reacted with a perfume ingredient.

Therefore, in the Board's judgement, claim 1 does not contain all the process steps which are essential for obtaining the required product and for enabling the skilled person to decide with certainty, in the light of the wording of the claim and of the teaching of the description, whether a given method of preparation falls within the scope of the claim or not.

The Board concludes that the subject-matter of claim 1 does not comply with the requirements of Article 84 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

G. Rath