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**Datasheet for the decision
of 12 December 2008**

Case Number: T 0703/06 - 3.3.06

Application Number: 98105961.1

Publication Number: 0870496

IPC: A61K 7/50

Language of the proceedings: EN

Title of invention:
Skin cleansing sheet

Patentee:
KAO CORPORATION

Opponents:
HENKEL AG & Co. KGaA
The Procter & Gamble Company
Paul Hartmann AG

Headword:
Impregnated sheet/KAO

Relevant legal provisions:
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive step (all requests) - no: obvious alternative"

Decisions cited:
T 0939/92

Catchword:
-



Case Number: T 0703/06 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 12 December 2008

Appellant I: HENKEL AG & Co. KGaA
(Opponent I) VTP (Patente)
D-40191 Düsseldorf (DE)

Representative: -

Appellant II: The Procter & Gamble Company
(Opponent II) One Procter & Gamble Plaza
Cincinnati
Ohio 45202 (US)

Representative: Samuels, Lucy Alice
Gill Jennings & Every LLP
Broadgate House
7 Eldon Street
London EC2M 7LH (GB)

Respondent: KAO CORPORATION
(Patent Proprietor) 14-10, Nihonbashi
Kayaba-cho 1-chome
Chuo-ku
Tokyo (DE)

Representative: Kindler, Matthias
Hoffmann Eitle
Patent- und Rechtsanwälte
Arabellastrasse 4
D-81925 München (DE)

Other party: Paul Hartmann AG
(Opponent III) Paul-Hartmann-Strasse 12
D-89522 Heidenheim (DE)

Representative: Friz, Oliver
Dreiss, Fuhlendorf, Steimle & Becker
Patentanwälte
Gerokstrasse 1
D-70188 Stuttgart (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
21 March 2006 concerning maintenance of
European patent No. 0870496 in amended form.

Composition of the Board:

Chairman: L. Li Voti
Members: P. Ammendola
J. Van Moer

Summary of Facts and Submissions

I. This appeal is from the interlocutory decision of the Opposition Division concerning the maintenance in amended form of European patent No. 0 870 496 according to the then pending second auxiliary request of the Patent Proprietor.

II. Claim 1 according to this request (hereinafter claim 1 as maintained) reads:

- "1. *Use of a skin cleansing sheet obtainable by impregnating (c) a sheet with an aqueous composition containing*
- (a) *5 to 50 wt.% of a nonionic surfactant having an HLB of 10 to 16,*
 - (b) *5 to 30 wt. % of a polyhydric alcohol or glycol ether selected from ethylene glycol, propylene glycol, isoprene glycol, dipropylene glycol, glycerol, 1,3-butylene glycol, sorbitol or diethylene glycol monoethyl ether, and*
 - (d) *0.1 to 10 wt.% of a salt selected from the group consisting of:*
 - the sulfates of metals selected from among Groups 1A, 2A, 2B and 3B of the periodic table, the sulfates of non-metallic ions and alkali metal carbonates;*
 - the sulfates of metals selected from Group 1B of the periodic table, alum, alkali metal hydrogencarbonates, alkali metal tripolyphosphates and pyrophosphates, sodium chloride,*

potassium chloride, ammonium chloride, and alkali metal silicates; and the citrates, tartrates, succinates and carboxymethyloxy succinates of metals selected from among Groups 1A, 2A, 2B and 3B of the periodic table as well as the citrate, tartrate, succinate and carboxymethyloxy succinates of an ammonium ion,

wherein the sheet (c) is a non-woven fabric, wherein

- (1) the content of cellulose is at least 50 wt.%;*
- (2) the average basis weight is 20 to 120 g/m²;*
- (3) the average fineness of constituent fibres is at most 3 d (deniers);*
- (4) it is a non-woven fabric fabricated by water-jet interminglement; and*
- (5) the reflectance is at least 45 % when measured in a dry state, for removing make-up."*

Opponents I to III sought revocation of the granted patent, *inter alia*, on the grounds of lack of inventive step (Article 100(a) EPC in combination with Articles 52(1) and (2) and 56 EPC) and insufficiency of disclosure (Article 100(b) EPC).

They relied, *inter alia*, upon the following documents:

- (1) US-A-5 462 691,
- (2) US-A-4 715 982

(5) EP-A-0 5411 347

(6) WO 96/32092 and

(23) EP-A-0 303 528.

III. The Opposition Division considered in its decision, *inter alia*, that:

- the claimed invention was sufficiently disclosed;
- document (23) disclosed nonwoven fabric webs suitable for use as wet wipes having all the features required for the fabric sheet in claim 1 as maintained except the reflectance;
- this citation, although briefly referring also to the removal of facial make-up, focused on the biodegradability and disruption properties of the webs when disposed after use;
- hence, document (23) did not motivate the skilled person addressing the problem of removing make-up, to impregnate a fabric sheet as required in claim 1 as maintained with the specific aqueous composition also defined in such claim;
- moreover, the advantages of the invention as described in paragraph [0006] of the patent in suit were plausible even in the absence of any supporting evidence and were not mentioned in any of the relevant documents;

- therefore, the subject-matter of such claim complied with the requirements of the EPC.

IV. The Opponents I and II (hereinafter Appellants I and II) lodged an appeal against this decision.

The Appellant II filed with its statement of the grounds of appeal inter alia the document

(32) EP-A-0 750 063.

The Patent Proprietor (hereinafter Respondent) filed under cover of a letter dated 8 March 2007, inter alia, three sets of amended claims labelled as first to third auxiliary requests as well as the document

(37) pictures showing the technical meaning of the reflectance.

V. Claim 1 according to the **first auxiliary request** differs from claim 1 as maintained (see above section II) only in that the wording

"(1) the content of cellulose is at least 70 wt.%;"

replaces

"(1) the content of cellulose is at least 50 wt.%;".

Claim 1 of the **second auxiliary request** differs from claim 1 as maintained only in that the wording

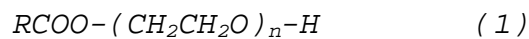
"(1) *the content of cellulose is at least 100 wt.%;*"

replaces

"(1) *the content of cellulose is at least 50 wt.%;*".

Claim 1 of the **third auxiliary request** differs from claim 1 as maintained only in that the wording

"(a) *5 to 50 wt.% of a nonionic surfactant having an HLB of 10 to 16 and being represented by the following general formula (1):*



wherein RCO is a saturated or unsaturated acyl group having 4 to 30 carbon atoms and n is a number of 1 to 50 on the weight average,"

replaces

"(a) *5 to 50 wt.% of a nonionic surfactant having an HLB of 10 to 16,*".

VI. The Board summoned the parties to oral proceedings to be held on 12 December 2008. Opponent III, who is party as of right to these appeal proceedings (Article 107 EPC), informed the Board with a letter of 20 November 2008 that it was not going to be represented at the forthcoming hearing.

VII. The oral proceedings took place as scheduled in the absence of Opponent III.

During the discussion of sufficiency of disclosure the Respondent requested the admission into the proceedings of some further data on the commercial sheets used in the patent examples, without indicating any reasons possibly justifying the late filing of such data.

The Appellants considered such request as unacceptably belated, in particular since the possible relevance of the missing information on the reflectance of the sheets used in the patent examples was manifestly evident already from the Appellants' initial statements setting out the grounds of appeal.

VIII. The Appellants maintained in writing and orally that the claimed invention was insufficiently disclosed. Moreover, it lacked an inventive step for, *inter alia*, the following reasons.

The technical effects of the cleansing composition of the invention described in paragraph [0006] of the patent in suit were not only deprived of any supporting evidence but were also not credible. In particular, the sole portion in this paragraph possibly alleging the achievement of improved properties, i.e. the portion referring to the "*enhanced*" detergency and detergent speed in combination with an "*improved*" stability attributed to the presence of the salt component "(d)", was proved wrong by the experimental data reported in the patent itself, demonstrating that the aimed detergency and stability results were already obtained when the cleansing composition contained no salt.

Also the "*anti-strike through*" properties (hereinafter AST properties) - i.e. the avoidance that the removed smears deposited on one side of the cleansing sheet could become apparent on the other side thereof - alleged in paragraph [0038] of the patent in suit as possibly resulting from the reflectance of the support sheet, was neither proven nor credible over the whole ambit of the claim. In particular, the photographic comparison of two different wet wipes based on sheets of different reflectance reported in document (37) was not disclosed in sufficient detail and was, in any case, too limited for rendering credible over the whole claimed range the alleged criticality of a sheet reflectance of at least 45%. This lack of supporting evidence could not be remedied by the Respondent's unsupported allegations as to the existence of a plausible correspondence between the required reflectance, the porosity of the sheet and the allegedly achieved AST effect. Indeed, the patent itself proved the contrary when disclosing in paragraphs [0034] and [0039] that the AST properties of a sheet depended as well on structural features manifestly unrelated to its superficial porosity and, thus, possibly to its reflectance. Moreover, it would be evident to the skilled person that the sheet reflectance would also necessarily depend on other features such as, for instance, the colour of the fibres used or the presence therein of optical brighteners, that could vary independently on the sheet overall porosity and the therefrom resulting AST properties.

Therefore, neither the evidence of document (37), nor the patent disclosure, nor the common general knowledge of the skilled person rendered plausible that the required sheet reflectance of at least 45% ensured in substantially all embodiments of the claimed use the achievement of a level of AST properties superior to that achievable by using sheets of lower reflectance.

Accordingly, the sole credibly solved technical problem was the provision of an alternative to the commercially available white or light coloured wet wipes for make-up removal.

This problem had been solved in an obvious manner by combining the sheets disclosed in document (23) or those of document (32), adjusted to have an arbitrarily selected level of reflectance i.e. of whiteness, with the known make-up cleansing compositions disclosed in the examples of document (1) as particularly suitable for make-up removal and with the common general knowledge in this technical field - or with the explicit teaching in document (5) - as to the possibility of using e.g. sodium chloride or citrate in order to minimise the irritability of skin cleansing compositions.

An inventive step was also not implied by the arbitrary limitations as to the amount of cellulose fibres present in the sheet according to claim 1 of the Respondent's first and second auxiliary request, arbitrary limitations that were still encompassed within the general teaching of document (32). In addition, table 4 of the patent in suit would disprove

any alleged criticality of a cellulose fibre content of at least 70 wt.%.

Finally, no surprising effect was proven to derive from the restriction of the nonionic surfactant ingredient of claim 1 of the third auxiliary request to the same ethoxylated fatty acid esters that were preferred ingredients of the cleansing compositions exemplified in document (1) and whose mildness to the skin was evident, for example, from documents (2) and (6).

IX. The Respondent refuted these arguments of the Appellants by arguing as follows.

The patent in suit provided sufficient disclosure of the invention claimed, *inter alia*, because a skilled person would certainly know how to prepare sheets with a reflectance of more than 45%.

In respect of the issue of inventive step, the most relevant prior art was represented by the wet wipes disclosed in document (23) or by those according to document (32).

The subject-matter of claim 1 as maintained differed from such prior art, on the one hand, in the specific cleansing composition used for impregnating the support sheet and, on the other hand, because neither document (23) nor document (32) mentioned the reflectance of the sheets disclosed therein.

The Respondent submitted that the experimental evidence reported in document (37) proved that the high reflectance of the sheets of the invention resulted in

superior AST properties. The achievement of these superior properties was also implicitly described in paragraph [0038] of the patent in suit and was credible. The skilled reader of the patent in suit would immediately realize that the required reflectance of at least 45% would necessarily correspond to a limited porosity of the sheets to be used for the invention and, thus, represented a technically plausible cause also for superior AST properties.

However, the Respondent conceded at the oral proceedings before the Board that the sheet reflectance of at least 45% was insufficient for ensuring the achievement of a specific minimum level of AST properties. It thus submitted that the inventive concept underlying the claimed use consisted in the surprising finding that a high reflectance of the support sheet favoured the AST effect in wet wipes containing the specific aqueous cleansing composition of the invention.

The Respondent also argued that even if one would regard the objective technical problem as just that of providing an alternative to the use of the wet wipes for make-up removal of the prior art, then the skilled person would have no reason for selecting among the non-woven sheets possibly disclosed in document (23) or (32) those having a reflectance of at least 45% and/or for modifying them so as to achieve such reflectance, and then combining such sheets specifically with the cleansing composition disclosed in document (1) and finally modifying such composition by the addition thereto of the salts disclosed e.g. in document (5).

The question as to what the skilled person "would" have done when searching for further wet cleansing sheets suitable for removing make-up, as distinct to what he "could" have done, rendered even less obvious the subject-matter of claim 1 according to the first to third auxiliary requests wherein the specific nature of the sheet and/or that of the cleansing composition was further specified.

In particular, the increased cellulose content of the fabric sheets according to claim 1 of the first and second auxiliary request improved the retention of the aqueous cleansing composition.

The Respondent finally submitted that the surfactants according to formula "(1)" of claim 1 of the third auxiliary request provided a lower irritability to the skin. On the contrary, in examples 2 to 4 of document (1) the amount of nonionic PEG400 monoisostearate, i.e. the component in these examples according to such formula, would be less than the minimum amount of 5 wt.% required for achieving such effect.

- X. The Appellants requested that the decision under appeal be set aside and the patent be revoked.

The Respondent requested that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of any of the first to third auxiliary requests as filed with the letter of 8 March 2007.

Reasons for the decision

Procedural issues

1. At the oral proceedings before the Board, during the discussion of the parties' arguments and requests relevant under Article 83 EPC 1973, the Respondent presented for the first time some additional data in order to prove that also the commercially available sheets used in the patent examples possessed all the features relevant to the invention.

However, the Appellants objected to the introduction of these data as unjustifiably belated, because, in their opinion, the relevance of the fact that the patent in suit did not provide complete technical information as to the features of the used commercial sheets and, in particular, to their reflectance, was already evident from the Appellants' statements setting out the grounds of appeal.

Since the Respondent did not dispute this fact and did not provide any justification for the late filing of such data, the Board finds that these latter are not to be admitted into the proceedings (RPBA Article 13(1)).

Main request (patent as maintained by the Opposition Division)

2. The Board finds the claimed subject-matter sufficiently disclosed. Since the Respondent's requests cannot succeed on other grounds as explained here below, no reasons need to be given in respect of this finding.

3. *Inventive step for the subject-matter of claim 1*
(Articles 56 EPC 1973)

- 3.1 Claim 1 defines the use for make-up removal of an impregnated cleansing sheet (i.e. a wet wipe) made by impregnating a non-woven support sheet "(c)" having the structural characteristics "(1)" to "(5)" with a cleansing aqueous composition containing a nonionic surfactant "(a)", a polyhydric alcohol or glycol "(b)" and a salt "(d)" (see above section II of the Facts and Submissions).

- 3.2 The Board notes that according to the patent in suit the claimed subject-matter aims at solving two sorts of technical problems: i.e. those related to the technical advantages attributed to the **skin cleansing composition** impregnating the sheet (see e.g. paragraph [0006] of the granted patent, in particular in the portion reading "*...it has been found that a skin cleansing sheet obtained by impregnating a sheet with an aqueous composition containing a specific nonionic surfactant and a polyhydric alcohol or glycol ether has high detergency and detergent speed to oily smears such as smears of make-up and sebum and low irritativeness to the skin, gives users a pleasant feeling upon use, and moreover has good handling property and stability. It has also been found that when a certain amount of a salt is added to the aqueous composition, not only the detergency and detergent speed are more enhanced, but its stability is also improved, and that this salt-containing aqueous composition is excellent for a skin detergent composition even when it is used by an ordinary washing method, to say nothing of the case where it is impregnated into a sheet for use, thus*

leading to completion of the present invention") and those disclosed in paragraph [0030] as resulting from the features of the **support sheet** (i.e. excellent retention of the aqueous detergent composition, high detergency of oily smears, scarce strike-trough and pleasant feeling to the user).

The Board notes that these technical problems are typical of the technical field of wet wipes and in particular of those wet wipes that are designed to be suitable for cleansing the facial skin.

The Respondent has considered equally relevant the prior art wet wipes disclosed in document (23) as well as those disclosed in document (32).

The Board notes that document (23) only briefly envisages the removal of make-up, but is rather focused on the biodegradability and disruption properties of the wipes upon disposal after use, as evident from the examples and the description at the bottom of page 7.

On the contrary, document (32) explicitly indicates (see e.g. page 2, lines 4 to 6 and lines 39 to 43) that the wet wipes disclosed therein are particularly suitable for cleansing skin, in particular facial skin, because they comprise an aqueous cleaning liquid and a non-woven fibrous substrate providing superior cleaning ability and softness to the skin of the user.

Therefore, the Board finds that the wet wipes of document (32) represent a more reasonable starting point for the assessment of an inventive step than the wipes known from document (23).

3.3 The Board concurs with the Respondent that the claimed use requires the application of wet wipes that differ from the wet wipes of document (32) for

a) the reflectance of at least 45% of the support sheet

and

b) the specific kind of impregnating composition.

3.4 As to the technical effect possibly produced by the distinguishing feature a), the Respondent has attributed thereto the achievement of superior AST properties, i.e. the **sole** of the advantageous technical effects mentioned in paragraph [0030] that the patent itself expressly links to the high reflectance of the support sheets (see paragraph [0038] of the patent in suit). According to the Respondent's submissions there existed a correspondence between the required sheet reflectance and the improved AST properties that would be demonstrated by the photographic evidence of document (37). This correspondence would be due to the fact that both the sheet reflectance and the AST properties required a limited porosity of the support sheet.

The Board finds credible that, as also evident from the photographs of document (37), the cleansing sheets used according to present claim 1 display AST properties superior to those achieved when using similar wipes based on sheets differing from the former ones **only** for

their higher superficial porosity and, thus, their lower reflectance.

However, as convincingly observed by the Appellants (see above section VIII of the Facts and Submission), it is **the patent itself** that expressly acknowledges that the AST properties of a sheet also depend on structural features thereof, such as the basis weight of the sheet (see paragraph [0034]) and the hydrophilicity and the orientation of the fibres in particular in the plies forming the interior of the sheet (see paragraph [0039]), that are evidently unrelated to the sheet superficial porosity and, thus, to its reflectance. Already for this reason, it becomes evident that the claimed subject-matter embraces wet wipes that even though having the same reflectance must nevertheless display quite different AST properties (e.g. because of the presence of an intermediate ply of very different hydrophilic qualities, or because of a different orientation of the fibres favouring the smear permeation, or because of a different basis weight). Conversely, even the sheets of the prior art, such as those embraced by the disclosure of document (32), that possibly display a reflectance of less than 45% may nevertheless possess one or more of these other structural characteristics that positively influence the AST properties (see document (32) page 5, lines 43 to 48, page 8, lines 20 to 25). Therefore, also the prior art sheets of lower reflectance may be expected to achieve AST properties that are comparable or even better than those possibly displayed by the support sheets of higher reflectance as required in present claim 1.

Moreover, the Respondent has conceded at the oral proceedings before the Board that the reflectance of at least 45% does not necessarily imply the achievement of a specific minimum level of AST properties (see above section IX of the Facts and Submission). This amounts to an implicit acknowledgement that the claimed use may produce AST properties that are possibly comparable to - or even worse than - those already achieved when using the wet wipes of possibly lower reflectance of the prior art, such as those possibly embraced by the disclosure of document (32).

Hence, the Board finds that the patent as a whole does not render convincing the alleged achievement over the whole breadth of the claim of improved AST properties.

- 3.4.1 The Respondent has then submitted that the invention would actually be based on the surprising finding that a high reflectance of the support sheets could favour the achievement of superior AST properties.

In the Board's opinion this submission, independently on any consideration as to its credibility, leaves unchanged the fact that the sheets according to the invention, although having a reflectance of at least 45%, may nevertheless display a level of AST properties possibly comparable or even inferior to those displayed by the sheets of document (32) of lower reflectance, but possessing, for instance, higher basis weight or a more hydrophobic intermediate layer.

3.4.2 Hence, the Board concludes that the distinguishing feature a) of point 3.3 above does not ensure to the claimed use any technical advantage vis-à-vis the prior art credibly existing over the whole ambit of the claim.

3.5 It remains therefore to be considered whether or not the specific cleansing composition mentioned in the claim as maintained (i.e. the distinguishing feature b) of point 3.3 above) provides a credible technical advantage.

It is undisputed that the possibly relevant advantages are those mentioned in paragraph [0006] of the patent in suit (see also above point 3.2). The Board notes however that this paragraph contains a number of qualitative expressions such as "*... has high detergency and detergent speed to oily smears such as smears of make-up and sebum and low irritativeness to the skin, gives users a pleasant feeling upon use, and moreover has good handling property and stability*" which appear to simply enunciate those requirements that qualify cleansing compositions as suitable for removing the make-up applied onto the skin. Indeed, none of these expressions implies the achievement of a level of such properties that is superior to those already achieved by the compositions for cleansing make-up already known in the prior art.

The only portion of paragraph [0006] that could possibly express the allegation of a previously unachieved combination of properties is the portion referring to the advantageous effects of the salt ingredient "(d)" and reading "*It has also been found that when a certain amount of a salt is added to the*

*aqueous composition, not only the detergency and detergent speed are **more enhanced**, but its stability is also **improved**, and that this salt-containing aqueous composition is excellent for a skin detergent composition ..."* (emphasis added by the Board).

In this respect the Board notes that the patent in suit **contradicts** the alleged criticality of the salt ingredient of the cleansing composition, already for the undisputed fact that most of the patent examples (see e.g. Tables 1, 2 and 4) prove the excellent results achieved by salt-free detergent compositions.

Therefore, also this alleged technical effect is found not convincing in view of the patent as whole.

Accordingly, the Board concludes that the sole technical effect credibly produced by the feature b) distinguishing the claimed use from the use of the prior art wet wipes for facial cleansing of document (32) is that of rendering the former specifically suitable for make-up removal.

Moreover, the Respondent did not provide any evidence of a technical effect linked to the combination of features a) and b).

- 3.6 Hence, the Board finds that the sole technical problem credibly solved by the claimed subject-matter vis-à-vis the use for facial cleansing of the wet wipes disclosed in document (32) is that of providing a method for make-up removal.

3.7 Therefore, the inventive step assessment boils down to the question whether or not the skilled person, starting from document (32) and aiming at a method for make-up removal, would have considered it obvious to solve such problem by selecting among the support sheets disclosed in document (32) one having a reflectance of at least 45% and by implementing the generic instruction also contained in this citation so as to arrive at an impregnating composition fulfilling all requirements given for the composition in claim 1 as maintained.

3.7.1 In respect of the sheet reflectance of at least 45% the Board notes that it is undisputed that the reflectance is a conventionally used parameter for measuring the level of whiteness of paper sheets or similar materials, that a high reflectance is evidently only observable in white or lightly coloured sheets and that conventional wet wipes for facial skin cleansing are normally made from white or light coloured sheets, because whiteness is in general regarded as an attractive feature by the user. Moreover, the Respondent itself has convincingly maintained that a skilled person would know how to prepare sheets with a reflectance of more than 45%. Hence, and taking into account that nothing in document (32) suggests that the sheets disclosed therein are much less white or much more porous on their surface than any other conventional sheet for facial cleansing, it appears credible to the Board that sheets with very high reflectance are, if not already specifically exemplified in document (32), at least encompassed among the conventional variants that are rendered available to the skilled person upon reading the technical teaching of this document.

Therefore, no inventive skill of the skilled person is required for arbitrarily selecting among the sheets available to him upon reading document (32) those provided with an arbitrarily high reflectance, i.e. an arbitrarily high level of whiteness, thereby arriving at support sheets according to present claim 1.

3.7.2 The Board finds that it was obvious for the skilled person to solve the existing problem by impregnating the white or light coloured sheets of document (32) with whatever cleansing compositions previously disclosed in the prior art as being particularly suitable for make-up removal. Hence, it was also obvious to solve the posed problem by using as impregnating composition the skin cleansing agent of document (1) that is explicitly qualified as particularly suitable for make-up removal (see e.g. column 1, lines 5 to 10; column 2, lines 13 to 24; the examples and claim 9).

It is undisputed that such prior art composition satisfies all the requirements of the composition defined in claim 1 as maintained with the only exception that this prior art cleansing agent comprises none of the salts defined under "d)" in present claim 1.

However, it is common general knowledge, as well as a specific teaching provided e.g. by document (5) (see page 3, lines 32 to 41), that electrolytes such as sodium chloride or citrate are preferably to be added in an amount of preferably between 0.2 to 5% to cosmetic compositions for facial cleansing and in

particular also for make-up removal, in order to achieve less irritation to the eyes.

Hence, the Board concludes that the skilled person, aiming at rendering available a method for removing make-up and starting from the use of the wet wipes of document (32), would have considered it obvious to use for such aim in particular the whiter sheets according to such document impregnated with any of the cleansing agents disclosed e.g. in the examples of document (1) as specifically suitable for make-up removal, as well as to add therein any of the anti-irritation salts that are known (either from the common general knowledge of the person skilled in the art or from the specific teaching in document (5)) to be effective in skin cleansing compositions. By doing so the skilled person would have arrived at the presently claimed subject-matter without exercising any inventive ingenuity.

3.8 The Respondent has argued that there would be no pointer leading the skilled person to the specific combination of document (32) with documents (1) and (5) and/or to the selection of the sheets with a reflectance of at least 45%. The relevant question would be what the skilled person "would" do when searching for further wet cleansing sheet suitable for removing make-up, as distinct to what he "could" do.

3.9 The Board notes however that, when the technical problem is simply that of providing a further method for make-up removal, any of the conventional modifications or combinations of features previously used for make-up removal represents an equally suggested or obvious solution to the posed problem. It

is also established jurisprudence of the Boards of Appeal that the simple act of arbitrarily selecting one among equally obvious alternative variations is deprived of any inventive character (see e.g. T 939/92 of 12 September 1995, OJ EPO 1996, 309, No. 2.5.3 of the reasons). Therefore, even if the skilled person could as well have taken into consideration other combinations and/or conventional modifications of the prior art, the existence of such other obvious solutions does not render inventive the one leading to the presently claimed subject-matter.

3.10 Hence, the Board concludes that the subject-matter of claim 1 as maintained does not comply with the requirements of Article 56 EPC 1973 and, thus, that the Respondent's main request is not allowable.

First, second and third auxiliary requests

4. Claim 1 of the first auxiliary request and claim 1 of the second auxiliary request differ respectively from that of the main request only in that the cellulosic content of the support sheet is required to be at least 75% by weight or at least 100% by weight (see above section V of the Facts and Submissions).

The Respondent submitted by referring to Table 4 of the patent in suit that these higher cellulose amounts resulted in an improved retention of the aqueous cleaning composition.

Beside the fact that, in the Board's opinion, the skilled person is certainly aware that the more a sheet is made of cellulosic fibres the more it is hydrophilic

and, thus, the more it is prone to absorb aqueous cleansing compositions, the predictability of the effect allegedly proved in table 4 of the patent in suit would also be evident already from document (32) itself. Indeed, this document explicitly reminds the skilled reader that hydrophobic fibres are less prone to absorb aqueous cleaning compositions (see page 3, lines 48 to 51). The Board has noted that this document describes as **preferred** the combination of aqueous cleansing compositions with sheets containing superficial hydrophobic fibres because this combination results in a superior ability of the loosened fibre portions to remain away from the sheet surface (see at line 50 of page 3 "... *the desired effect may be achieved ...*" emphasis added by the Board). Nevertheless, the overall technical disclosure provided by this citation implicitly embraces also the possibility of using exclusively hydrophilic cellulosic fibres even in combination with an aqueous cleansing composition, at least in the case where the former are provided with a sufficient suitable stiffness (see page 3, lines 40 to 47). Accordingly, the possibility of using sheets containing only hydrophilic (i.e. cellulosic) fibres is expressly mentioned at page 5, lines 36 to 39 of document (32) in general terms, i.e. without any restriction as to the aqueous or non aqueous nature of the composition to be used therewith.

Hence, no inventive ingenuity is required from the skilled person for predicting that an increase of retention of the aqueous cleansing composition could be achieved by using among the sheets described in document (32) those made exclusively of hydrophilic fibres, because he also learns from this document how

to compensate the consequent reduction of the ability thereof to protrude from the sheet surface, i.e. by appropriately adjusting the flexural stiffness of the fibres used.

Therefore, no inventive step is implied by the additional restrictions as to the cellulosic nature of the sheet introduced in claim 1 of the first and of the second auxiliary request.

5. Claim 1 of the third auxiliary request differs from that of the main request only in that the chemical structure of the nonionic surfactant is limited to the ethoxylated esters of monocarboxylic fatty acids according to the formula "(1)" (see above section V of the Facts and Submissions).

The Board notes that ethoxylated esters according to this formula are already present in several of the examples of skin cleansing agents described in document (1) (see the PEG400 monoisostearate ingredient in examples 2 to 4 and the PEG400 monooleate ingredient in example 8).

The Respondent has submitted that in examples 2 to 4 of document (1) the amount of nonionic PEG400 monoisostearate component would be less than 5 wt.% and, thus, concluded that also for this reason the compositions of this citation would not comply with the nonionic surfactant definition in claim 1 of third auxiliary request request.

This conclusion is not convincing already because at least example 8 of this citation contains indisputably

5 wt.% of PEG400 monooleate. Moreover, it is not necessary to give details of the reasons that have brought the Board to the conclusion that the Respondent's interpretation of the disclosure of the examples 2 to 4 of document (1) is erroneous, because even if none of these examples would actually contain at least 5 wt.% of this specific group of nonionics, still column 2, lines 44 to 49, of the same document explicitly mentions for such ingredient a maximum amount of up to 30 wt.%. Hence, this citation is still found to suggest the possibility of increasing up to 30 wt.% of the composition the amount of e.g. the PEG400 monooleate or monoisostearate ingredients used in the examples of document (1).

Therefore, and since document (1) indisputably specifies that these surfactants are **preferred** because they reinforce the cleansing effects (see column 2, lines 44 to 49), their use in an amount of up to 30 wt.% would have been obvious to the skilled person, in the Board's view, even if their additional bonus effect of rendering the claimed subject-matter less irritative to the skin would have been unpredictable.

Nevertheless, the Board wishes to stress that the skilled person would have expected that the use of the cleansing compositions of document (1) more rich in ethoxylated esters of monocarboxylic fatty acids results in lower irritativeness to the skin. Indeed, this effect of the compositions based on such nonionic surfactants or similar ones is not only expressly disclosed in document (2) (see column 1, lines 6 to 9; column 3, lines 31 to 47) or (6) (see page 1, lines 11 to 15, and from page 9, line 36 to page 10, line 5) but

presumably forms part of the common general knowledge of the skilled detergent formulator.

The Board finds therefore that also the remaining first to third auxiliary requests of the Respondent do not comply with the requirements of Article 56 EPC 1973 and, thus, concludes that none of them is allowable.

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

L. Li Voti