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**Datasheet for the decision
of 5 March 2009**

Case Number: T 1692/06 - 3.3.10

Application Number: 95928814.3

Publication Number: 0774980

IPC: A61L 9/01

Language of the proceedings: EN

Title of invention:

Composition for reducing malodor impression on inanimate surfaces

Applicant:

THE PROCTER & GAMBLE COMPANY

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 54

Keyword:

"Novelty (yes): multiple selections"
"Remittal"

Decisions cited:

T 0199/00

Catchword:

-



Case Number: T 1692/06 - 3.3.10

D E C I S I O N
of the Technical Board of Appeal 3.3.10
of 5 March 2009

Appellant:

THE PROCTER & GAMBLE COMPANY
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Cincinnati
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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 31 May 2006
refusing European application No. 95928814.3
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: R. Freimuth
Members: P. Gryczka
J.-P. Seitz

Summary of Facts and Submissions

- I. The present appeal lies from the decision of the Examining Division refusing the European patent application No. 95928814.3 published under the international publication No. WO 96/04940.
- II. The Examining Division held that the subject-matter of claim 1 of the then pending request lacked novelty in view of document

(4) US-A-4 938 416

which disclosed all the features of the claimed article including the required perfume ingredient which had solely to be selected from a single list of components described in that prior art document.

- III. During the oral proceedings held in front of the Board on 5 March 2009, the Appellant replaced all previously filed requests by a sole request including 9 claims.

Claim 1 of said request reads as follows:

"1. An article comprising
(i) an aqueous composition for reducing malodor impression on fabrics comprising
(A) from 0.01% to 1% by weight of the composition, of perfume comprised of at least 50% by weight of perfume ingredients having a ClogP of 3 or smaller, and
(B) aqueous carrier, and
(C) optionally less than 5% by weight of the composition low molecular weight mono-hydric alcohols

selected from the group consisting of ethanol, methanol and isopropanol, and

(D) 0%-3% by weight of the composition of solubilising aid,

(E) optionally 0.1%-5% by weight of the composition of cyclodextrin,

(F) optionally, from 0.1% to 10%, preferably from 0.2% to 7% by weight of the composition, of water-soluble metallic salts selected from the group consisting of water-soluble zinc salts, water-soluble copper salts, and mixtures thereof, preferably zinc chloride, or zinc gluconate, or zinc lactate, or zinc maleate, or zinc salicylate, or zinc sulfate, or copper chloride, or copper gluconate, or mixtures thereof, more preferably, zinc chloride and

(G) optionally from 0.0001% to 0.5%, more preferably from 0.0002% to 0.2%, and most preferably from 0.0003% to 0.1%, by weight of the composition, of solubilised, antimicrobial preservative having a water solubility of greater than 0.3%, at room temperature, and

(ii) a spray dispenser containing the composition, wherein the composition is essentially free of material that would soil or stain fabric, and wherein said composition has a pH of greater than 3."

IV. The Appellant argued that the amendments to the claims found a support in the application as filed. The claimed article was novel over the disclosure of document (4) since three selections had to be operated within the disclosure of document (4) in order to arrive at the perfume component (A) required by claim 1.

V. The Appellant requested that the decision under appeal be set aside and that the case be remitted to the first

instance for further prosecution on the basis of claims 1 to 9 of the request submitted during the oral proceedings before the Board.

VI. At the end of the oral proceedings the decision of the Board was announced.

Reasons for the Decision

1. The appeal is admissible.

Amendments

2. Claim 1 is derived from original claims 1 and 6 relating respectively to an aqueous composition and to an article comprising a spray dispenser and said composition. That the aqueous composition is intended to reduce malodour impression on "fabrics" finds a basis on page 1, line 28 of the application as filed. Feature (A) of claim 1 finds a basis in claim 1 as filed and on page 8, lines 23 to 25, feature (B) in claim 1 as filed, feature (C) in claim 1 as filed and on page 14, lines 23 to 29, that this feature is optional is based on page 14, line 26. Feature (D) is based on feature C. of claim 2 as filed whereas feature (E) is based on page 11, lines 24, 25 and 27 . Features (F) and (G) are based, respectively, on features B. and D. of claim 2 as filed. That these features are optional is based on page 12, line 6 and on page 15, line 8. Finally that the composition has a pH of greater than 3 is based on page 17, lines 28 to 30 of the application as filed.

Claim 2 is based on claim 6 as filed.

Claim 3 is based on claim 1 as filed in combination with page 8, lines 23 to 31.

Claim 4 is based on features A. and C. of claim 2 as filed.

Claims 5 to 7 are based respectively on claims 3, 4 and 5 as filed.

Claims 8 and 9 are based on claim 7 as filed.

The amended set of claims fulfils therefore the requirements of Article 123(2) EPC.

Novelty

3. The claimed article comprises an aqueous composition comprising among other ingredients from 0.01% to 1% by weight of the composition, of perfume comprised of at least 50% by weight of perfume ingredients having a ClogP of 3 or smaller (feature (A)).

The fragrances used in the article disclosed in document (4) comprise one or more natural materials or synthetic aroma chemicals or mixtures of the two (column 3, lines 29 to 31). Among the examples of natural fragrances listed in document (4) some have a ClogP of 3 or smaller, namely at least eugenol, geraniol, heliotropine, isoeugenol and coumarin, whereas other of that list have a ClogP which is higher than 3, namely at least citronellol (column 3, lines 31 to 37 in connection with the table of perfume

ingredients and their ClogP values annexed to the letter of the Appellant dated 14 March 2001 filed during the examination proceedings).

In order to arrive at the perfume required by feature (A) of present claim 1 three selections have to be operated within the disclosure of document (4) namely, firstly to select the "natural materials" and not the alternative synthetic aroma chemicals, secondly to select among the list of natural fragrances only those having a ClogP of 3 or smaller and, finally, to select "one" and not "more" natural fragrances since the selected compound should at least represent 50% by weight of the perfume ingredients which feature is only satisfied if "one" single fragrance is present.

Since three selections have to be operated within the disclosure of document (4) to arrive at feature (A) of the claimed article, document (4) does not disclose directly and unambiguously the claimed article (see for example decision T 199/00, point 4.2.1 of the Reasons, not published in OJ EPO).

Consequently, the subject-matter of claim 1 and for the same reasons that of dependent claims 2 to 9 is novel with regard to the disclosure of document (4) (Article 54 EPC).

Remittal

4. Having so decided, the Board has not, however, taken a decision on the whole matter, since the appealed decision dealt exclusively with the issue of novelty with regard to document (4). Under these circumstances

the Board considers it appropriate to exercise the power conferred to it by Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of claims 1 to 9 of the request submitted during the oral proceedings before the Board.

The Registrar:

The Chairman:

C. Rodríguez Rodríguez

R. Freimuth