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**Datasheet for the decision
of 18 June 2010**

Case Number: T 0555/07 - 3.3.06

Application Number: 97905476.4

Publication Number: 0889117

IPC: C11D 17/06

Language of the proceedings: EN

Title of invention:

Detergent composition for clothing

Patentee:

KAO CORPORATION

Opponent:

The Procter & Gamble Company

Headword:

Method for washing clothes/KAO

Relevant legal provisions:

EPC Art. 123(3)
RPBA Art. 13(1)(3)

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Inventive step (main request and first auxiliary request): no
- obvious alternative"
"Article 123(3) EPC (second auxiliary request): protection
extended"

Decisions cited:

-

Catchword:

-



Case Number: T 0555/07 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 18 June 2010

Appellant: The Procter & Gamble Company
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
26 January 2007 concerning maintenance of
European patent No. 0889117 in amended form.

Composition of the Board:

Chairman: P.-P. Bracke
Members: P. Ammendola
U. Tronser

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. 0 889 117 according to the then pending main request.

II. Claims 1 and 7 of the patent **as granted** read:

"1. A detergent composition for clothes washing comprising:

(I) surfactant components comprising:

A) one or more sulfonate-type anionic surfactants; and

B) at least one of nonionic surfactants and sulfate-type anionic surfactants, wherein a weight ratio of component B to component A is $B/A = 1/10$ to $2/1$; and

(II) components comprising:

C) one or more alkali metal silicates; and

D) one or more metal ion capturing agents other than component C),

wherein the weight ratio of component C to component D is $1/6$ to $4/3$ in a case where a water hardness is 6 to 10°DH , and the weight ratio of component C to component D is $1/15$ to $1/1$ in a case where a water hardness is 10 to 20°DH ,

wherein a total amount of the components (I) is from 20 to 50 % by weight, and a total amount of the components (II) is from 30 to 80% by weight,

and wherein the detergent composition has a bulk density of 0.6 g/cc or more. "

"7. A process for washing clothes utilizing a detergent composition, the improvement for which comprises using a composition as claimed in claim 1 as a detergent composition."

III. The Opponent had sought revocation of the granted patent for, *inter alia*, lack of inventive step.

During the opposition proceedings the Opponent had made reference, *inter alia*, to document

(23) US-A-5,378,388

and the Patent Proprietor had filed an amended set of claims labelled as main request.

IV. Claim 1 of such main request (hereinafter claim 1 **as maintained**) read:

"1. A method for washing clothes wherein a detergent composition is used in a washing liquid having an initial water hardness of 6 to 20°DH, said detergent composition comprises:

(I) surfactant components comprising:

A) one or more sulfonate-type anionic surfactants; and

B) at least one of nonionic surfactants and sulfate-type anionic surfactants,

wherein a weight ratio of component B to component A is $B/A = 1/10$ to $2/1$; and

(II) components comprising:

- C) one or more alkali metal silicates; and*
- D) one or more metal ion capturing agents other than component C),*

wherein the weight ratio of component C to component D is 1/6 to 4/3 in a case where the water hardness is 6 to 10°DH, and the weight ratio of component C to component D is 1/15 to 1/1 in the case where the water hardness is 10 to 20°DH,

wherein a total amount of the components (I) is from 20 to 50 % by weight, and a total amount of the components (II) is from 30 to 80% by weight, and wherein the detergent composition has a bulk density of 0.6 g/cc or more. "

V. The Opposition Division found, *inter alia*, that the method for washing clothes (hereinafter CW method) defined in this claim provided a non-obvious solution to the technical problem of washing clothes with excellent detergency and with a small amount of dosage. Since none of the prior art documents presented by the Opponent showed any indication that detergent compositions should comprise the components C and D in the claimed ratios depending on the hardness of water and/or to use surfactants A and B in the claimed ratios, the subject-matter of claim 1 as maintained was found inventive over the cited documents.

VI. On 29 March 2007 the Opponent (hereinafter Appellant) lodged an appeal against this decision and paid the appeal fee the day before. In the grounds of appeal

filed on 1 June 2007 the Appellant only raised objections in view of Article 56 EPC (1973).

The Patent Proprietor (hereinafter the Respondent) replied with a letter dated 18 December 2007 thereby filing a retyped version of the claims as maintained labelled as main request, as well seven sets of amended claims labelled as first to seventh auxiliary request.

VII. Claim 1 of the second auxiliary request filed on 18 December 2007 (subsequently renumbered as **first auxiliary request** at the oral proceedings before the Board, see section IX below) differed from claim 1 as maintained (see section II above) only in that the final wording

"or more."

has been replaced with

"or more,

wherein the detergent composition is used at a concentration of from 0.50 to 1.20 g/L in the washing liquid with a water hardness of from 6 to 10°DH, and wherein the detergent composition is used at a concentration of from 0.80 to 2.50 g/L in the washing liquid with a water hardness of from 10 to 20°DH."

VIII. The Parties were summoned to oral proceedings before the Board to be held on 21 April 2010.

With a letter dated 19 March 2010 the Respondent announced that it would no longer maintain its previous

fourth to seventh auxiliary requests and filed further experimental data (hereinafter indicated as the new data) as well as a new version of the set of claims of the third auxiliary request.

Both Parties then informed the Board that an unpredictable stop in airline traffic in the days immediately preceding 21 April 2010 rendered impossible their attendance at the hearing. Hence, the Board postponed the oral proceedings to 18 June 2010.

- IX. At the oral proceedings the Appellant requested that the decision under appeal be set aside and the patent be revoked.

The Respondent requested that the appeal be dismissed or that the patent be maintained on the basis of the second auxiliary request submitted with letter of 18 December 2007 (now first auxiliary request) or on the basis of the second auxiliary request submitted during oral proceedings.

- X. Claim 1 of the **second auxiliary request** filed at the oral proceedings differs from claim 1 as maintained (see section II above) only in that the wording

"80% by weight, and wherein"

has been replaced with

"80% by weight, wherein the nonionic surfactants are alkylene oxide adducts of alcohols in which the alkyl moiety has an average number of carbon atoms of 10 to

18 and wherein alkylene oxide is added in an average of from 4 to 10 moles, and wherein".

XI. The Appellant's arguments may be summarized as follows:

This Party considered belated the new data filed by the Respondent on 19 March 2010 because they only aimed at supporting an advantageous effect vis-à-vis the CW method disclosed in document (23) whose relevance for inventive step should already have been clear to the Respondent at latest upon reading the grounds of appeal. The Appellant stressed that it was impossible to verify the filed data and/or to prepare counter evidence in the few weeks passing between 19 March 2010 and the initially scheduled date for oral proceedings of 21 April 2010. The same remained valid for the few further additional weeks passing between this latter date and the actual final date of the hearing. At the oral proceedings this Party mentioned, in particular, difficulties in getting in such short time some of the ingredients used in the relevant examples of document (23).

As to the assessment of inventive step for the subject-matter of claim 1 of the main request, the Appellant considered that the person skilled in the art would have started from document (23), because this citation was explicitly concerned with the provision of granular detergent compositions having superior cleaning performance and, in particular, was focused on the provision of superior cleaning performance by optimizing the ratios of different builder types. Moreover, all detergent compositions B to F exemplified in columns 9 and 10 of document (23) were used to wash

clothes in water having a hardness level of 11.5°DH. These compositions comprised sulfate-type anionic surfactants (hereinafter sulfates) corresponding to ingredient B of claim 1 as maintained, as well as builders corresponding to the ingredients C and D thereof. Accordingly, the only difference between claimed method and any of these CW methods exemplified in document (23) was the additional mandatory presence in the former of the sulfonate-type surfactant (hereinafter sulfonate) in the indicated amounts. In the absence of any evidence of a technical advantage deriving from such difference in the surfactant components, the CW method of claim 1 only represented an alternative to any of the examples in document (23), such as that based on, for instance, composition B (hereinafter indicated as the example B of document (23)). However, such alternative was already suggested in document (23) itself, as this citation disclosed a mixture of sulfonate and sulfate at relative amount ratios of 30:70 to 70:30 as especially preferred surfactant.

As to the inventiveness of the subject-matter of claim 1 of the first auxiliary request, the Appellant stressed that the two ranges introduced in this claim for the concentration of the detergent composition in the washing liquor depending on the water hardness, were nothing special. In particular, both ranges encompassed the standard amount dosage for high density detergent compositions also referred to in paragraph [0004] of the patent in suit. Accordingly, the CW methods exemplified in document (23) had also been carried out using from 1000 to 1500 ppm of detergent composition in the washing liquors, which corresponded

to a standard concentration of 1 to 1.5 g/l. Hence, the same reasoning given above for claim 1 as maintained applied to claim 1 of the (final) first auxiliary request, too.

The second auxiliary request was considered by the Appellant belatedly filed as well as not manifestly clear and, thus, inadmissible. In any case, claim 1 of such request would not comply with Article 123(3) EPC, as it no longer limited the percent amount of nonionic surfactant ingredient in general and their amount ratio in respect of the sulfonate.

XII. As to the late filing of the new data, the Respondent argued that it was due to the fact that only during further consultations between the Respondent and its Representative the provision of experimental evidence had appeared appropriate for disputing the Appellant's case. Moreover, the late filing of the new data was also possibly due to the same difficulty in obtaining the necessary ingredients that had also rendered impossible to the Respondent the rapid provision of experimental counter evidence. In any case, in the opinion of the Respondent, not only the onus of providing experimental evidence lied in essence on the side of the Appellant, but this latter could and should have either requested preventively in the grounds of appeal sufficient time for providing counter evidence in the hypothetical case that experimental data were subsequently filed by the Respondent, or at least reacted to the actual filing of the new data on 19 March 2010 by requesting a postponement of the hearing in order to be able to carry out counter experiments or to verify the data.

The CW method of claim 1 as maintained could not possibly have been rendered obvious by the disclosure of document (23). Firstly, this citation mentioned only incidentally the hardness of the water used in the examples, but it did not mention the specific technical problem addressed in the patent-in-suit of achieving excellent level of detergency depending on the hardness of the water used. Secondly, this citation just focused on the optimization of the builder ingredients. Indeed, what was varied in the examples of document (23) was just the builder system, whereas the surfactant system used therein was always the same. This rendered evident that the special surfactant system used was essential for the achievement of the desired detergency in the examples of this citation. On the contrary, the mention in document (23) of preferred surfactants based on mixtures of sulfonate and sulfate was just one of several alternatives described as preferred in this citation, none of which, however, was positively disclosed therein to be at least as good as the very special surfactant system used in the examples. Hence, the skilled reader of document (23) could not have felt motivated to modify the specific surfactant system used in the examples. In the patent-in-suit, instead, the achievement of improved detergency required also the use of the specific surfactant combination of sulfonate with, for example, sulfate at specified weight ratios. This was not foreseeable upon reading document (23).

In respect of the subject-matter claimed in the first auxiliary request, the Respondent particularly emphasized that there was no information in document (23) as to how to regulate the amount of detergent in

the washing liquors in respect of the hardness of the available tap water.

As to the wording introduced in claim 1 of the second auxiliary request, the Respondent stressed that it corresponded to the preferred embodiment "(4)" disclosed in paragraph [0021] of the patent-in-suit whose wording would in essence be comparable to that of a dependent claim. Hence, this claim fulfilled the requirements of Article 123(3) EPC.

Reasons for the decision

Procedural issues

1. Admissibility of the new data
 - 1.1 According to Article 13(1) RPBA (Supplement to the OJ EPO 1/2008, page 38), an amendment of the party's case after it has filed its grounds of appeal or its reply thereto may be admitted and considered at the Boards discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. Article 13(3) RPBA states that amendments made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party cannot reasonably be expected to deal with without adjournment of the oral proceedings.
 - 1.2 The Board notes the following facts, undisputed by the Respondent:

- the new data have been submitted by the Respondent almost three years after the Appellant's statement of the grounds of appeal and only about one month before the initially arranged date for oral proceedings before the Board of 21 April 2010 (see section VIII of the Facts and Submissions above);

- these data aim at demonstrating an advantageous technical effect of the CW method of the invention vis-à-vis the prior art disclosed in document (23),

- the relevance of this citation in respect of inventive step, although not expressly considered in the decision under appeal, was at least extensively discussed in the grounds of appeal,

- after the grounds of appeal the Appellant has made no further submission preceding (and, thus, possibly justifying) the filing of new experimental data,

- the Respondent has not expressed in its reply to the grounds of appeal the intention to carry out experimental tests, nor has announced immediately after receiving the summons to oral proceedings that experimental results were going to be filed before the hearing,

- it was not possible for the Appellant to verify the new data or to provide counter evidence in the few weeks comprised between the date of filing of these data and the date initially scheduled for oral proceedings, or in the additional few weeks available in consequence of the postponement of the oral

proceedings from 21 April to 18 June 2010 due to unforeseeable *force majeure*.

The Board concludes therefrom that the unannounced filing of the new data about one month before the initially arranged date for the oral proceedings constitutes an amendment of the Respondent's case that takes by surprise the Board and the Appellant and that raises issues that this latter cannot reasonably be expected to deal with without adjournment of the hearing.

- 1.3 The Board finds irrelevant in this respect the Respondent's argument that the Appellant should have - in the Respondent's opinion - either preventively requested in the grounds of appeal sufficient time for providing counter evidence in the hypothetical case that experimental data were subsequently filed by the Respondent, or at least reacted to the filing of the new data on 19 March 2010 by requesting a postponement of the hearing. In the opinion of the Board, **neither** the presence or absence of a preventive generic declaration of intention in the grounds of appeal (to provide counter evidence to any experimental data possibly filed by the counterpart in the subsequent appeal proceedings) **nor** the Appellant's choice on how to react to the filing of the new data have any bearings on the question whether the unannounced filing of the new data about one month before the already arranged oral proceedings takes by surprise the Board and the Appellant and raises issues that these latter cannot reasonably be expected to deal with without adjournment of the hearing.

Moreover, the Board finds the further submission of the Respondent that the main reason for the belated filing of the new data was the difficulty (also mentioned by the Appellant) in obtaining some of the ingredients needed for replicating the examples of document (23), insufficient for rendering admissible the filing of **previously unannounced** experimental data. Indeed, even assuming that this difficulty was actually the sole reason for the delayed filing of the new data, still the Respondent should have acted differently in order to avoid taking by surprise the Board and the other party at such late stage of the appeal proceedings. For instance, it should have promptly informed the Board and the other party on the nature of the difficulty encountered and on the then ongoing attempts to overcome this difficulty. Moreover, when the needed ingredients had become available, the Respondent should have again promptly informed the Board and the Appellant that experimental work was finally going to be started, possibly announcing also the expected date for the filing of the results.

- 1.4 Therefore, the Board has decided not to admit the new data into the appeal proceedings.

Respondent's main request (claims as maintained)

2. Inventive step (Article 56 EPC (1973)): claim 1 as maintained
 - 2.1 This claim defines a CW method wherein the water used has an initial hardness of 6 to 20°HD and the detergent composition used therein has a density of at least 0.6 g/cc and comprises the two surfactant ingredients A and

B and the two metal ion capturing agents C and D specified in the claim at given relative amount ratios and total amount percentages. In particular, the amount ratio of C/D is defined dependently on the water hardness, i.e. such ratio must be from 1/6 to 4/3 when the hardness of the used water is from 6 to 10°HD, and must be from 1/15 to 1/1 when the hardness of the used water is from 10 to 20°HD.

2.2 According to the established jurisprudence of the Boards of appeal of the EPO, the appropriate starting point for the inventive step assessment is to be identified within the same technical field of the claimed subject-matter by taking into account the specific technical problem indicated in the application or patent as solved by this subject-matter.

2.3 In the patent-in-suit the advantageous technical effect of the invention is initially defined by indicating that this latter relates to "*a detergent composition for clothes washing exhibiting **excellent detergency with a small amount of dosage** and a process for washing clothes using the detergent composition*" (see paragraph [0001] of the published granted patent, emphasis added by the Board).

The Board notes, however, that the CW method defined in claim 1 as maintained does **not** identify any upper limit for the dosage of the detergent composition (or for the surfactant concentration in the washing liquor) and, thus, embraces CW methods based on any (lower than standard, standard or higher than standard) dosage of detergent. Moreover, the patent-in-suit explicitly identifies (see paragraph [0033] and granted claims 8

and 9) two very broad ranges, depending on the hardness of the water used, for the concentration of the detergent composition in the washing liquor, both encompassing the standard amount dosage for high density detergent compositions also referred to in paragraph [0004] of the patent in suit. This has not been disputed by the Respondent.

Therefore, the Board concludes that the claimed method is neither explicitly nor implicitly intended to be limited to the use of any particularly low amount of detergent composition.

Accordingly, the advantageous technical effect of the invention mentioned in paragraph [0001] appears relevant for the whole claimed subject-matter (i.e. inclusive of the embodiments thereof wherein one uses standard or higher than standard amounts of detergent compositions) only in as far it refers to the achievement of an "**excellent detergency**".

The Board notes, however, that the further description of the patent-in-suit teaches also that the C/D amount ratio in the detergent composition is optimized to the hardness of the tap water used for forming the washing liquor (see paragraphs [0030] and [0032] to [0034] of the granted patent) and that the same teaching is reflected in the features of claim 1 as maintained.

Thus, the Board finds convincing the Respondent's argument that the CW methods of the invention aim at achieving excellent level of detergency having regard also to the specific hardness value of the water to be used.

2.4 The Board notes that substantially the same technical problem was already addressed in document (23). As stressed by the Appellant, this citation not only mentions explicitly the achievement of superior cleaning performance (see column 1, lines 7 to 8), but specifies in the examples also that this advantageous technical effect has been obtained washing clothes in water having a hardness level of 11.5°DH (expressed as 12 grains/gallon in column 9, lines 38 to 45, of document (23)). Hence, it is apparent to the skilled reader of document (23) that the CW methods exemplified therein already solve the same technical problem addressed in the patent-in-suit (at least) **in as far as the use of tap water whose hardness is about 11.5°DH is concerned.**

Accordingly, the Board concurs with the Appellant that e.g. example B of document (23) represents a reasonable starting point for the purpose of assessing inventive step.

2.5 It is undisputed that the subject-matter of claim 1 as maintained only differs from the CW methods exemplified in this citation, such as that of example B, for the presence of the sulfonate ingredient A.

2.6 The Board notes that the patent-in-suit does not attribute **any** criticality to the sulfonate in respect of the excellent detergency aimed at by the claimed subject-matter. Indeed, the simple fact that the claim under consideration requires mandatorily ingredient A in a specific overall amount percent (in combination with the ingredient B) and at a specific amount ratio

(to ingredient B) does not appear to necessarily imply that the level of detergency obtained in the presence of sulfonates has been found superior to that obtainable when using other surfactants. Accordingly, and in the absence of any evidence to the contrary, the Board has no reason to doubt that the excellent level of detergency achieved in example B of document (23) is substantially the same obtained by the CW methods of claim 1 as maintained.

Thus, the Board finds that the technical problem credibly solved by the claimed subject-matter vis-à-vis the prior art is just the provision of a further method for washing clothes with excellent detergency having regard also to the specific hardness value of the water used, i.e. the provision of an alternative to this CW method of the prior art already achieving an excellent detergency when the water hardness is about 11.5°HD.

- 2.7 The Board concurs with the Appellant that document (23) explicitly indicates at column 6, lines 9 to 35, the possible use as surfactant ingredient of mixtures of sulfonates and sulfates. In particular, it discloses at column 6, lines 31 to 35, *inter alia*, the preferential use of sodium C₁₁₋₁₄ LAS and sodium C₁₄₋₁₆ alky sulfate in a weight ratio of e.g. 70:30. The self-evident fact that this mixture complies with the definition of the ingredients A and B and of their weight ratio in claim 1 as maintained has not been disputed by the Respondent.

Accordingly, the Board finds that the skilled reader of document (23) would find suggested therein the possibility of providing an alternative to the CW

method of e.g. example B, by replacing the mixture of surfactants used therein with an identical amount of the mixture of sulfonate and sulfate also disclosed in this column 6 of this citation. This obvious modification of the prior art, encompassed within the general disclosure of document (23), leads the skilled person to the claimed subject-matter without the need of exercising any inventive ingenuity.

- 2.8 The Respondent has instead argued that the skilled reader would **not** be motivated to modify the examples in this citation by partly replacing the surfactant system used therein with a sulfonate and by maintaining unchanged the other components, such as the builder system. This argument is based on the fact that, on the one side, all examples in document (23) comprise an identical multi-component surfactant system containing sulfate but no sulfonate and, on the other side, that the whole disclosure in this citation is focused on the optimization of the builder system.

The Board finds however that these facts neither contradict nor in some other way jeopardize the credibility of the abundant and explicit disclosure also contained in document (23) as to the many possible alternatives for the surfactant system. Accordingly, these facts do not deprive of relevance the unambiguous disclosure at column 6, lines 9 to 35, of the same document of the (preferred) use of mixtures of sulfonate and sulfate at 30:70 ratio.

The skilled reader of document (23) would then reasonably expect that the application of this alternative surfactant ingredient to e.g. any of the CW

methods exemplified therein, allows to retain their excellent detergency.

- 2.9 The Board concludes therefore that the subject-matter of claim 1 as maintained results from an obvious modification of the prior art and, thus, is not based on an inventive step. Accordingly, the main request of the Respondent is found to violate Article 56 EPC (1973) and, hence, not allowable.

Respondent's first auxiliary request

3. Inventive step (Article 56 EPC (1973)): claim 1.

This claim differs from that of the main request only in that it further specifies the concentration of the detergent composition in the washing liquid. In particular, it requires this concentration to be from 0.8 to 2.50 g/L in the washing liquid with a water hardness of from 10 to 20°DH (see section VII of the Facts and Submissions above).

- 3.1 The Board notes however that document (23) defines the amount of detergent in the washing liquid to typically be "*on the order of from about 1000 ppm to about 1500 ppm*" (see document (23), column 9, lines 5 to 8). Accordingly, any reasonable reduction into practice of the teachings of document (23), inclusive of the reproduction of any of the examples and of all obvious modifications thereof embraced by the overall teaching in this citation, is necessarily encompassed in the range of about 1 to 1.5 g/L. Hence this range manifestly applies also to e.g. example B of this citation and, thus, the introduction of the amount of

detergent in the washing liquid in claim 1 of the first auxiliary request represent no additional distinguishing feature in respect of the prior art.

- 3.2 Accordingly, the Board finds that claim 1 of the Respondent's first auxiliary request is not based on an inventive step for the same reasons indicated above for claim 1 as maintained and, hence, that also this request is not allowable in view of Article 56 EPC 1973.

Respondent's second auxiliary request

4. Added subject-matter (Article 123(3) EPC): claim 1.

4.1 This claim differs from the combination of claims 1 and 7 as granted in that it requires that "*the nonionic surfactants*" possibly forming the ingredient B "*are alkylene oxide adducts of alcohols in which the alkyl moiety has an average number of carbon atoms of 10 to 18 and wherein alkylene oxide is added in an average of from 4 to 10 moles*" (hereinafter these alkylene oxide adducts are indicated as the "defined adducts").

4.2 The Board concurs with the Appellant that the wording of claim 1 of the second auxiliary request requires **only** the defined adducts to comply with the requirements expressed as the weight ratio B/A, but implies no restriction as to the ratio in the detergent composition of nonionic surfactants **in general**, i.e. also comprising those **different from the "defined adducts"**. On the contrary, the combination of claims 1 and 7 as granted required **all** nonionic surfactants possibly present therein to comply with this requirement. Hence, claim 1 of the second auxiliary

request embraces subject-matter that was not already encompassed in the subject-matter of claims 1 and 7 as granted.

- 4.3 The argument presented by the Respondent in respect of this issue is that the amendment introduced in claim 1 of the second auxiliary request corresponds to a passage numbered as "(4)" in paragraph [0021] of the description of the patent-in-suit, whose wording would in essence be comparable to that of a dependent claim.

The Board notes, however, that for deciding whether the requirement of Article 123(3) EPC is fulfilled it is not relevant whether the description of the patent as granted would provide a basis for this amendment. The only decisive point is whether an extension of protection results from the amendment(s) in respect of the subject-matter defined in claims 1 and 7 as granted.

Incidentally, the Board finds that the passage referred to by the Respondent refers to the definition of the detergent composition in the preceding item "(3)", that on its turn refers to the further distinct definition thereof in the preceding item "(1)" that **explicitly limits, inter alia**, the amount of (any) nonionic surfactants **in general** by defining the B/A weight ratio and the total amount of ingredients A and B. Hence, the passage "(4)" can only be interpreted as disclosing a subgroup of the previously defined detergent compositions and, thus, its disclosure remains limited to detergent compositions that beside containing the defined adducts must also necessarily comply with the requirements **for any nonionic surfactant** as to the B/A

weight ratio and to the total amount of ingredients A and B. On the contrary, claim 1 of the second auxiliary request neither explicitly specifies that any nonionic surfactant possibly present in addition to the defined adducts must comply with these requirements nor implicitly excludes the presence of any other nonionic surfactants different from the "defined adducts" (e.g. by stating that **the** nonionic surfactants present in the composition are **exclusively** the "defined adducts").

- 4.4 Thus, the Board concludes that claim 1 of the Respondent's second auxiliary request does not comply with Article 123(3) EPC and, therefore, that also this request is not allowable.

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. Eickhoff

P.-P. Bracke