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**Datasheet for the decision
of 2 August 2007**

Case Number: T 0603/07 - 3.3.06

Application Number: 04764254.1

Publication Number: 1664254

IPC: C11D 1/02

Language of the proceedings: EN

Title of invention:

Liquid laundry detergent with polyanionic ammonium surfactant

Applicant:

UNILEVER N.V., et al

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 21(3)(a), 108, 111(1)

EPC R. 51(5), 89

Keyword:

Decisions cited:

G 0008/95, T 0850/95

Catchword:

-



Case Number: T 0603/07 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 2 August 2007

Appellant: UNILEVER N.V. et al.
Weena 455
NL-3013 AL Rotterdam (NL)

Representative: Rosen Jacobson, Frans Lucas M.
Unilever Patent Group
Olivier van Noortlaan 120
NL-3133 AT Vlaardingen (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 5 February 2007
refusing correction of the decision to grant
the European patent 1 664 254 published on
10 January 2007.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division to refuse a correction of pages of the description in respect of the application No. 04 764 254.1 requested by the appellants following the receipt of a communication under Rule 51(4) EPC.
- II. In reply to the Examining Division's communication under Rule 51(4) EPC dated 18 July 2006 the appellants requested with letter dated 27 September 2006 amendments of the pages 4, 5, 7 and 11 of the description and filed a translation of the claims in the two official languages French and German simultaneously.

With a brief communication dated 26 October 2006 the Examining Division informed the appellants that the French translation consists of 21 claims and the German translation consists of 20 claims and invited them to clarify the matter as soon as possible so that it can go on with the amendments requested. This clarification was filed by the appellants with letter dated 3 November 2006.

On 14 December 2006 the Examining Division issued a decision to grant the European patent, which was published on 10 January 2007.

With a "communication in response to a request to amend the application documents" dated 5 February 2007 the Examining Division informed the appellants that their request for amendment dated 27 September 2006 was received on 29 September 2006, but arrived at the

Examining Division only after the decision to grant the European patent had been handed over to the EPO internal postal service. Furthermore the Examining Division informed of its opinion that it is bound by its decision, so that the requested amendments can no longer be considered, but that the appellants' attention is to be drawn to the possibility of appeal against the decision to grant. The Examining Division eventually referred to the attached Form 2019 containing the text of the Articles 106 to 108 EPC.

III. On 15 March 2007 the appellants filed an appeal against the decision of the Examining Division to grant the European patent without considering their request for amendment of 27 September 2006 and paid the appeal fee simultaneously. On 29 May 2007 the appellants filed the grounds of appeal, which contained the following arguments:

As mentioned in the communication by the Examining Division dated 5 February 2007, their request for amendment was received on 29 September 2006 but arrived at the Examining Division only after the decision to grant the European patent had been handed over to the EPO internal postal service.

In view of this, it is requested that the Examining Division will examine the amendments for allowability within the scope of an interlocutory revision.

Furthermore, since it is clear that a procedural error has been made by the Examining Division, it is also requested that the appeal fee will be refunded.

Reasons for the Decision

1. The decision on this appeal falls within the competence of this technical board and not within that of the Legal Board. The requested corrections filed with letter dated 27 September 2006 formed primarily a request under Rule 88 EPC for it was directed to a correction of errors in a document filed with the EPO. But after the decision to grant the European patent was issued without having considered the requested amendments of the description this request must be interpreted as a request for correction of errors in decisions under Rule 89 EPC and thus this appeal is directed against a decision concerning the grant of a European patent within the meaning of Article 21(3) (a) EPC see G 8/95 OJ 1996, 481).

2. The appeal is admissible.

Though the appeal was filed on 15 March 2007 together with the payment of the appeal fee and thus not within the two-month time limit with regard to the decision to grant the European patent published on 10 January 2007 the board holds the appeal filed within the time limits under Article 108 EPC. From the publication in the European Patent Bulletin 07/02 of 10 January 2007 the appellants could not become aware if the Examining Division had based the grant of the patent on the amended version of the description or not and consequently could not recognise if they were adversely affected by the decision to grant or not. Only after receipt of the "communication" of the Examining Division dated 5 February 2007 they became aware that

the Examining Division had not considered their request for amendments and is of the opinion that the requested amendments could no longer be considered as it holds itself bound by the decision to grant the European patent.

Although labelled as "communication in response to a request to amend the application documents" this response to the appellants request dated 27 September 2006 forms a decision of the Examining Division not to consider the requested amendments of the description and therefore not to correct the decision to grant the European patent. This decision dated 5 February 2007 triggered the time limits under Article 108 EPC. Thus the time limits under Article 108 sentence 1 and 2 EPC are met, although the Examining Division in paragraph 3 of its decision dated 5 February 2007 - not seeing the decisive nature of its "response" - in contradiction to this mentioned the possibility of appeal against the decision to grant.

The same applies to the grounds of appeal filed on 29 May 2007 and thus meeting the time limit under Article 108 sentence 3 EPC.

3. The requested correction is allowable under Rule 89 EPC, if it removes a linguistic error, error of transcription or obvious mistake in the decision. According to the practice of the EPO the decision to grant is a form generated by Electronic Data Processing. In respect of the description, the form refers to the documents indicated in the communication pursuant to Rule 51(4) EPC. By this reference the documents approved by the applicant become an integral part of

the decision to grant in the same way as if the documents were repeated in the decision itself. It follows from this that errors in the description may be corrected under Rule 89 EPC (see T 850/95 OJ 1997, 152).

In a decision to grant is an obvious mistake within the meaning of Rule 89 EPC, if the text given for grant is obviously not the text corresponding to the real intention of the deciding instance.

In the present case it follows from the Examining Division's brief communication dated 26 October 2006 that - in contradiction to the information given in its "response" dated 5 February 2007 - the appellants' letter dated 27 September 2006 reached the Examining Division about two months before the decision to grant was issued on 14 December 2006. Because in the last sentence of this brief communication the Examining Division invites the appellants to clarify this matter (i.e. the inconsistent translation of the French or German version of the claims filed with letter dated 27 September 2006) as soon as possible, "so that we can go on with the amendments requested", the Examining Division intended to base its decision to grant the European patent on a consideration of the requested amendments but, according to its "response" dated 5 February 2007, failed to do so.

The appellants requested to replace in the description on page 4, lines 10 and 11 the symbol \square by μ and ν and on page 4, line 26 and page 5, line 1 the same symbol by α , β and γ . As the symbol \square is obviously a wildcard character, these amendments are directed to correct a clerical uncleriness or a clerical error. The same

applies for the four further requested amendments: On page 5, line 13 the same wildcard character □ should be corrected by "α" so that it reads "α-sulfonatedalkyl", on page 7, line 23 "morpholineine" should be corrected into "morpholine", on page 7, line 24 it should read "its" instead of "ist" and on page 11, line 2 "PASS" should be corrected into "PAAS".

The "response" dated 5 February 2007 did not contain any reasons as to why these amendments were held to be allowable by the Examining Division or not. But the board can assume that the Examining Division did not intend to accept the above mentioned clerical unclearness or errors in the description as a basis for its decision to grant.

As the requested amendments contribute to a correction of obvious clerical errors the board itself can correct the description (see Article 111(1) EPC).

4. The appeal fee is to be reimbursed according to Rule 67 EPC, because the appeal succeeds and the reimbursement is equitable by reason of substantial procedural violations.

During the proceedings before the Examining Division two substantial procedural violations occurred:

In the communication under Rule 51(4) EPC dated 18 July 2006 the appellants were informed that, if they do not approve the text intended for grant but wish to request amendments or corrections the procedure described in Rule 51(5) EPC is to be followed. But although the appellants requested corrections of the description

within the time limit of four months set in the communication of the Examining Division (i.e. before the date of 29 November 2006), their letter dated 27 September 2006 was only taken into consideration insofar as the Examining Division informed them about the inconsistency in the French or German translation of the claims.

The amendments requested simultaneously however were not taken into consideration.

Furthermore instead to check on its own authority, if its decision to grant the European patent may be corrected according to the appellants request to be interpreted as a request for corrections under Rule 89 EPC, the Examining Division in its "response" dated 5 February 2007 held wrongly that it is bound by its decision to grant in that way, that the requested amendments can no longer be considered and therefore caused the appellants wrongly as well to file an appeal.

Thus the appeal fee paid by the appellants is to be reimbursed.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The decision to grant published on 10 January 2007 is corrected in respect to the description of the granted European patent as follows:

On page 4, lines 10 and 11 of the English text the symbol \square is replaced by μ and ν such that these lines read: "where μ and ν are in the range of 0 and 4 and the sum of μ and ν is between 1 and 4".

On page 4, line 26 and page 5, line 1 of the English text the symbol \square is replaced by α , β and γ such that these lines read: "The values of α , β and γ are between 0 to 10 and the sum of α and β is greater than or equal to 1".

On page 5, line 13 the symbol \square is replaced by α such that it reads: " α -sulfonatedalkyl".

On page 7, line 23 "morpholineine" is replaced by "morpholine".

On page 7, line 24 "ist" is replaced by "its".

On page 11, line 2 "PASS" is replaced by "PAAS".

3. The appeal fee is reimbursed.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke