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**Datasheet for the decision
of 23 June 2009**

Case Number: T 1506/07 - 3.3.06

Application Number: 99933892.4

Publication Number: 1095128

IPC: C11D 3/50

Language of the proceedings: EN

Title of invention:

Amine reaction compounds comprising one or more active ingredient

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Henkel AG & Co. KGaA

Headword:

Amine reaction compound/PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 56, 84

Keyword:

"Compliance with Art. 84 EPC: yes"

"Inventive step (main request): no - obvious to try with expectation of success"

"Inventive step (first auxiliary request): yes"

Decisions cited:

T 0570/91, T 0130/89, T 0192/82

Catchword:

-



Case Number: T 1506/07 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 23 June 2009

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

Representative: -

Respondent: THE PROCTER & GAMBLE COMPANY
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Representative: Fisher, Adrian John
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 14 August 2007
rejecting the opposition filed against European
patent No. 1095128 pursuant to Article 102(2)
EPC 1973.

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
U. Tronser

Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division to reject the opposition against the European patent no. 1 095 128 concerning a softening composition comprising the product of reaction of an amine and a perfuming active ingredient.

II. In its notice of opposition the Opponent sought revocation of the patent *inter alia* on the grounds of Article 100(a) EPC.

The Opponent referred during the opposition proceedings *inter alia* to the following documents:

(1): US-A-5008437;

(2): EP-A-841391;

(5): US-A-4853369;

(10): EP-A-392619;

(16): "Advanced Organic Chemistry" by J. March, 3rd edition, 1985, page 784;

(17): DE-B-1133847; and

(18): EP-A-11499.

III. As regards inventive step the Opposition Division found in its decision *inter alia* that

- the Opponent had identified documents (1), (2), (17) and (18) as suitable starting points for the evaluation of inventive step;

- however, documents (2) and (18) did not relate to the use of a Schiff base formed from aldehydes or ketones, i.e. an imine prepared by condensing an amine with a

carbonyl compound, and document (17) concerned especially alkaline detergent compositions and did not relate to softening compositions;

- therefore, document (1), disclosing the use of a Schiff base as perfuming component in fabric softeners, could be regarded as representing the closest prior art;

- starting from the teaching of document (1), concerning the use of a Schiff base which was the condensation product of methyl anthranilate and ethyl vanillin, the skilled person would not have found any motivation to replace the methyl anthranilate with another amine or to combine this teaching with that of another cited document in order to solve the technical problem underlying the invention;

- in particular, document (10), though suggesting the use of a Schiff base formed from an amine having a low odour impact for scavenging malodorous aldehydes, did not relate to softening compositions and did not suggest to avoid the use of methyl anthranilate; moreover, the cited prior art did not teach that Schiff bases of methyl anthranilate caused any problem;

- therefore, the claimed subject-matter was inventive in the light of the cited prior art.

IV. An appeal was filed against this decision by the Opponent (Appellant).

The Respondent (Patent Proprietor) submitted with the letter of 13 May 2009 sets of claims according to the first to third auxiliary requests and requested to be

permitted to combine the amendment of the first auxiliary request with those of the second and third auxiliary request, if necessary.

Oral proceedings were held before the Board on 23 June May 2009.

During oral proceedings the Respondent withdrew the then pending main request and second and third auxiliary requests and submitted three new sets of claims to be considered as main request and first and second auxiliary requests, respectively.

V. Claim 1 according to the **main request** submitted during oral proceedings reads as follows:

"1. A fabric softening composition comprising from 1% to 80% by weight of a fabric softening compound and a product of reaction between a primary and/or secondary amine compound and an active component selected from perfume ketones, perfume aldehydes, and mixtures thereof, said composition further comprising a liquid carrier comprising at least 50% by weight of water, characterised in that said amine compound has an Odour Intensity Index of less than that of a 1% solution of methylantranilate in dipropylene glycol; and further characterised in that said composition has a pH of from 2.0 to 5; and further characterized in that said product of reaction is preformed before incorporation into the fully formed composition."

Claim 1 according to the **first auxiliary request** differs from claim 1 according to the main request

insofar as the amine compound is specified after the wording "in dipropylene glycol" as follows:

", which amine compound is selected from polyethyleneimines; 2,2',2"-triaminotriethylamine; 2,2'-diamino-diethylamine; 3,3'-diamino-dipropylamine, 1,3 bis aminoethyl-cyclohexane; poly[oxy(methyl-1,2-ethanediyl)], α -(2-aminomethylethyl)- ω -(2-aminomethylethoxy)-; poly[oxy(methyl-1,2-ethanediyl)], α -hydro-)- ω -(2-aminomethylethoxy)-, ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol; C12 Sternamines; and mixtures thereof;".

Claims 2 to 7 of this request relate to particular embodiments of the claimed fabric softening composition; claims 8 and 9 relate to a method of delivering residual fragrance to a fabric surface comprising the step of contacting said surface with a composition as defined in any one of claims 1 to 7.

VI. As regards the requests submitted during oral proceedings the Appellant submitted that

- the essential features mentioned in paragraph 19 of the patent in suit were not contained in the respective main claims of all requests; therefore, these claims contravened the requirements of Article 84 EPC;

- any of documents (10), (17) or (2) could be used as starting point for the evaluation of inventive step;

- document (10) disclosed already the same technical concept as the invention since it related to the use of a Schiff base formed from amines and perfume aldehyde

or ketone components wherein the amines did not distort the perfuming notes of the aldehydes or ketones upon decomposition of such a condensation product; in particular, this document taught explicitly to avoid the use of methyl anthranilate as amine because of its capacity of distorting the perfume characteristics of aldehydes and ketones; moreover, even though this document related mainly to washing powders or soaps, it suggested the use of the condensation product in combination with fabric softeners and it taught the generic use of the Schiff base in a fragrance;

- document (17) also disclosed the same technical concept as the invention since it taught the use of a condensation product of oxyamines, such as ethanolamine, and a perfume aldehyde or ketone ingredient in washing powders or soaps in order to provide to the washed textile a substantive perfuming note of the ketone or aldehyde; the used amines belonged to one of the classes known from document (10) not to distort the perfume characteristics of aldehydes and ketones; moreover, this document taught the generic use of these condensation products in perfuming compositions;

- all other features of claim 1 according to the main request not disclosed in documents (10) or (17) were not critical for the invention; moreover, they were already known, for example, from document (2);

- as indicated in paragraph 10 of the patent in suit, it was already known that the Schiff bases of documents (1) and (5) were substantive to the treated fabric and, once on the fabric, released gradually the methyl anthranilate; therefore, it was obvious for the skilled

person to solve the problem caused by this amine by using less odorous amines like those disclosed in documents (10) or (17);

- furthermore, the Respondent did not provide any evidence that all the Schiff bases encompassed by the wording of the claim would be able to be delivered as such to the fabric from an acidic softening composition and, once on the fabric, to release gradually over time the aldehyde or ketone perfume;

- therefore, the claimed subject-matter lacked an inventive step in the light of the teaching of document (10) or (17);

- document (2) had already offered a solution to the technical problem underlying the invention by adding an amino-functional polymer, such as polyethylenimine, to a fabric treatment composition containing a perfume aldehyde or ketone ingredient or a condensation product of an amine and an aldehyde; the skilled person, looking for an alternative solution, would have obtained by the expert in the field of perfuming compositions the information about the condensation products disclosed in document (10) or document (17) and, in the light of the teaching of these documents, would have recognised their utility for solving such a technical problem (reference was made to the decisions T 130/89 and T 192/82);

- moreover, the skilled person, aware that imines hydrolyze easily as shown e.g. in document (16), would have tried as alternative also a condensation product of the polyethyleneimine and the perfume aldehyde or

ketone ingredients used in document (2) instead of the single components suggested in this document;

- similar arguments applied to the more restricted claim 1 according to the first auxiliary request;

- in particular, it had not been made credible that all the amines encompassed by said claim 1, some of them being relatively short amines, solved the technical problem underlying the invention.

VII. The Respondent submitted orally that

- paragraph 19 of the patent in suit did not represent any claimed embodiment of the invention but one embodiment which had not been pursued any longer; this paragraph thus had to be disregarded;

- document (10) did not concern the use of a Schiff base in a softening composition but for a very different purpose; therefore, the skilled person would not have expected that such a Schiff base could be used in an acidic softening composition as required in the patent in suit with expectation of success;

- the condensation products used in document (17) hydrolysed quickly in water so that the skilled person would not have used them in an acidic aqueous softening composition with expectation of success;

- therefore, neither the teaching of document (10) nor that of document (17) could have led the skilled person to the claimed subject-matter (reference was made to T 570/91);

- document (2) suggested *inter alia* the use of condensation products of aldehydes and amines but it disclosed specifically only a Schiff base of methyl anthranilate;

- moreover, the prior art did not contain any teaching that Schiff bases of methyl anthranilate would decompose on the fabric and could cause any problem as indicated in paragraph 10 of the patent in suit; in fact, this information did not belong to the state of the art and this finding was a merit of the invention;

- therefore, in the light of the teaching of the prior art, there was no incentive for the skilled person to replace the Schiff base indicated specifically in document (2) with another one as taught, for example, in documents (10) or (17) with expectation of solving the technical problem underlying the invention;

- the experimental report submitted with letter of 5 September 2006 before the Opposition Division showed the technical advantage obtained by means of the claimed subject-matter; the Appellant had never showed that any of the claimed amines would not be able to bring about the desired technical result;

- furthermore, the polyethylenimines used in document (2) did not contain any primary or secondary amine group and were unsuitable for condensing with aldehydes or ketones;

- all objections raised with regard to inventive step thus amounted to an ex-post facto analysis of the prior art;
 - the claimed subject-matter thus involved an inventive step.
- VIII. The Appellant requests that the decision under appeal be set aside and that the patent be revoked.
- IX. The Respondent requests that the patent be maintained according to the main request, or the first or second auxiliary request submitted during oral proceedings before the Board.

Reasons for the Decision

1. Respondent's main request

1.1 Articles 123 (2) and (3) EPC

The Board is satisfied that the claims according to the main request comply with the requirements of Articles 123(2) and (3) EPC.

Since the Appellant did not raise any objection in this respect no further details are necessary.

1.2 Article 84 EPC

The Appellant objected during oral proceedings that the wording of claim 1 did not comprise the technical features which are indicated to be essential in

paragraph 19 of the patent in suit, i.e. a specific Dry Surface Odour Index of the amine compound and the exclusion of amino styrene as possible amine compound.

The Board remarks that the wording of claim 1 according to the main request is clear by itself and undoubtedly does not report the above mentioned technical features.

However, the rest of the description does not mention these technical features as being essential; to the contrary, paragraph 20, following said paragraph 19, and paragraph 137 indicate the above mentioned specific Dry Surface Odour Index of the amine compound to be only a preferred feature when incorporated in a fabric softening composition; in fact, this specific index is part of the wording of dependent claim 2 according to the main request.

The Board thus finds that the skilled person would have understood that the alleged essential features listed in said paragraph 19 are not essential for the claimed fabric softening composition, as submitted by the Respondent during oral proceedings (see point VII above).

Therefore, claim 1 complies with the requirements of Article 84 EPC.

1.3 Inventive step

- 1.3.1 The invention of claim 1 relates to an aqueous liquid fabric softening composition having a pH of from 2.0 to 5 and comprising a product of reaction between a primary and/or secondary amine compound which is less

odorous than methyl anthranilate and an active component selected from perfume ketones, perfume aldehydes, and mixtures thereof (see point V above).

As explained in the description of the patent in suit, it was well known that consumer acceptance of perfumed products such as fabric softener compositions is determined not only by their performance but also by their capacity of maintaining a pleasing fragrance over time. However, the amount of perfume carried over from an aqueous laundry bath onto fabrics is often marginal and does not last long on the fabric. Therefore, it is desirable to provide means for a more efficient and effective fragrance delivery onto the fabric and for a longer endurance of such a fragrance on the fabric treated. This need is even more acute for perfume ingredients which are characteristic of the fresh notes, namely the aldehydes and ketones perfume ingredients. Indeed, whilst these provide a fresh fragrance, they are also very volatile and have a low substantivity on the fabric (paragraphs 2 to 7).

It was known in the art to render such volatile perfume ingredients substantive to the fabrics by using a carrier or an encapsulating material (paragraph 11). Moreover, it was known to use Schiff bases like a condensation product of an aldehyde perfume ingredient with an anthranilate, as disclosed in document (5). However, it was found that methyl anthranilate exhibits a strong scent itself and produces as a result a mixture of fragrances, thereby reducing or even inhibiting the aldehyde fragrance perception (paragraph 10).

The technical problem underlying the invention thus is formulated in the patent in suit as the provision of a fabric softening composition which is capable of conferring to the treated fabric a long-lasting fresh note of perfume aldehyde or ketone by means which do not reduce or inhibit the aldehyde or ketone fragrance perception (paragraphs 8, 9 and paragraphs 10 and 11 in combination with paragraph 14).

- 1.3.2 The most suitable starting point for assessing inventive step is, according to the jurisprudence of the Boards of Appeal of the EPO, a document (if available) conceived for the same purpose or aiming at the same objectives as the claimed invention and having the most relevant technical features in common (see Case Law of the Boards of Appeal of the EPO, 5th edition, 2006, point I.D.3.1).

The Board remarks that document (1) had been considered to be the closest prior art in the decision under appeal whilst, during the oral proceedings before the Board, the parties discussed only documents (2), (10) and (17) as a possible starting point for the evaluation of inventive step.

Document (10) relates to a method of removing or reducing unpleasant malodours or off-flavours arising from the presence of aldehydic materials in fats, oils and related products by means of a Schiff base capable of replacing them with a desirable aldehyde perfume ingredient which is delivered into the product over time (page 2, lines 3 to 4 and page 3, lines 12 to 15). The used Schiff base does not contain an amine which could distort the perfume characteristics of such a

perfume aldehyde (page 5, lines 49 to 51). This document cites also cationic quaternary ammonium compounds (which, as known, could be used as fabric softening agents) as a possible source of malodour (page 2, lines 23 to 24 in combination with lines 29 to 30). However, a use of said Schiff bases in a fabric softening composition is not specifically disclosed or suggested in this document.

Document (17) concerns the technical problem of providing an alkaline detergent or soap which is able to release aldehyde and perfume fragrances in a substantive way onto the treated fabric (see column 1, lines 1 to 20). A use in a fabric softening composition is not specifically disclosed or suggested in this document.

Therefore, neither document (10) nor document (17) concern explicitly the technical problem of providing a fabric softening composition which is capable of conferring to the treated fabric a long-lasting fresh fragrance of perfume aldehyde or ketone by means which do not reduce or inhibit the aldehyde or ketone fragrance perception.

Document (1) concerns a Schiff base formed from a methyl anthranilate and a perfume aldehyde ingredient, which can be used in fabric softening compositions in order to provide a long-lasting fragrance having high substantivity to the fabric and having a deodorant effect for masking malodours (see document (1), column 1, lines 10 to 30, 39 to 40 and 43 to 46). This condensation product has itself a substantive sweet, vanilla bean-like and sassafras aroma profile, i.e. a

fresh note (see document (1), column 12, lines 3 to 5). Therefore, this document concerns the provision of a fabric softening composition which is capable of conferring to the treated fabric a long-lasting fresh fragrance of **the condensation product itself**.

Paragraph 10 of the patent in suit, referring to document (5), a document having a content similar to that of document (1), informs that the Schiff base disclosed in that document, identical to that disclosed in document (1), by containing methyl anthranilate which exhibits a strong scent itself, would distort the aldehydic fragrance perception. This fact implies that the condensation product, once on the fabric, may release the amine and aldehyde components as separate entities; however, this teaching is not contained in the disclosures of document (1) and (5) which only relate to the use of the Schiff base for **its own perfuming properties**. Therefore, the information of paragraph 10 did not belong to the prior art, as submitted by the Respondent during oral proceedings. The Board thus finds that document (1) does not concern explicitly the technical problem of providing a fabric softening composition which is capable of conferring to the treated fabric a long-lasting fresh fragrance of perfume **aldehydes and ketones** by means which do not reduce or inhibit the aldehyde or ketone fragrance perception.

Document (2) concerns the technical problem of providing a fabric treatment composition such as **a fabric softening composition** which is able to release onto the fabrics in a substantive way a long-lasting hydrophilic perfume such as a perfume aldehyde or ketone capable of providing a fresh impression on the

surface treated; the aldehyde or ketone fragrance perception is not reduced or inhibited by the used means (see page 2, lines 9 to 13, 25 to 26 and 31 to 33; page 12, lines 35 to 37 and 40 to 43; page 18, lines 6 to 7; page 19, lines 30 to 33).

The Board finds that this document is the only one dealing with a similar technical problem as the patent in suit.

The Board thus takes document (2) as the most suitable starting point for the evaluation of inventive step.

- 1.3.3 Since document (2) had already solved the technical problem addressed to in the patent in suit, the technical problem underlying the invention, starting from the teaching of document (2), can only be formulated as the provision of an alternative fabric softening composition which is capable of conferring to the treated fabric a long-lasting fresh fragrance of perfume aldehyde or ketone by means which do not reduce or inhibit the aldehyde or ketone fragrance perception.

The Respondent has shown by means of the experimental report, submitted with letter of 5 September 2006 before the department of first instance, that a condensation product of Lupasol, a polyethylenimine, and Delta-Damascone, a ketone perfume ingredient, is stable in an acidic softening composition as claimed. According to the Respondent's submission such a condensation product thus would be substantive to the fabric treated and the perfume ketone would be gradually released over time by the condensation product, so providing a long-lasting fragrance.

The Appellant submitted that the Respondent's experimental report does not prove that the condensation product, once on the fabric, would be able to release the perfume ketone over time and that it has not been proven that all types of condensation products encompassed by the wording of claim 1, for example those containing short amines capable of hydrolysing easily already in an acidic fabric softening composition, are able to provide the desired technical effect.

It is the established jurisprudence of the Boards of Appeal of the EPO that in opposition appeal proceedings the Opponent bears the burden of proof with regard to its allegations against the existence of an inventive step (see Case Law of the Boards of Appeal of the EPO, 5th edition, 2006, point VI.K.5.1.1, fourth full paragraph, page 437, and VI.K.5.2, second full paragraph, page 440).

In the present case, the Appellant's allegation has not been substantiated by any evidence.

Therefore the Board, in the light of the above experimental data and in the absence of contrary evidence, has no reason to doubt that the condensation product tested, being stable in an acidic fabric softener composition, would be deposited substantively onto the fabric and would be decomposed over time releasing the perfume ketone. The Board has also no reason to doubt that the other products encompassed by claim 1 behave in a similar way.

Therefore, the Board is convinced that the subject-matter of claim 1 solves in its whole extent the above mentioned technical problem.

- 1.3.4 Document (2) teaches that the above mentioned technical problem is solved by incorporating an amino-functional polymer into the fabric treatment composition containing a hydrophilic perfume (page 2, lines 51 to 52). The fabric softening composition used can be, preferably, a liquid composition containing 5 to 80% by weight of a fabric softener component (page 19, lines 32 to 35); moreover, it has preferably a neat pH of 2 to 4.5 (page 21, lines 43 to 47) and contains a liquid carrier consisting substantially of water (see example 1). Moreover, the hydrophilic perfume can be an aldehyde or a ketone and also a condensation product of an aldehyde and an amine having a molecular weight of from 180 to 320 (page 12, lines 40 to 44). However, the only explicit disclosure of such a condensation product is aurantiol, which is the Schiff base of **methyl anthranilate** and hydroxycitronellal (page 13, line 10).

Therefore, document (2) contains an explicit disclosure of all the features of claim 1 with the exception of a condensation product containing an amine compound which is less odorous than methyl anthranilate.

The skilled person, faced with the technical problem of providing an alternative fabric softening composition which is capable of conferring to the treated fabric a long-lasting fresh fragrance of perfume aldehyde or ketone by means which do not reduce or inhibit the aldehyde or ketone fragrance perception, would have looked for other known means having such

characteristics which had already been suggested for use in perfuming compositions for the detergent field.

Both documents (10) and (17) concern the use of condensation products of amines and aldehyde or ketone perfume ingredients in perfuming compositions suitable for application in the detergent field (see point 1.3.2 above as well as document (10), claims 1, 2, 3 and 5 and document (17), claim). Moreover, it was known from document (10) that such condensation products are able to provide the treated fabric with a long-lasting fresh fragrance of the perfume aldehyde and that they do not distort the perfume characteristics of the aldehyde perfume ingredients since the amine used has not a negative impact like the anthranilates (document (10), page 3, lines 12 to 15; page 5, line 4 and page 5, lines 49 to 51). These characteristics apply also to the condensation products of document (17) (see column 1, lines 1 to 22 and 41 to 49), for example those of ethanolamine (see example 1 of document (17)), which is an amine also used according to the teaching of document (10) (see page 4, line 25 in combination with page 5, line 4).

Therefore, since the disclosure of document (2) suggests the use of any condensation product of perfume aldehyde and amines with a molecular weight of 180 to 320 (page 12, lines 43 to 44), the skilled person would have recognised the condensation products described in documents (10) or (17) to be suitable options of perfuming ingredients that could be tried instead of those specifically disclosed in document (2) in order to release perfume aldehyde or ketone to the fabric.

Furthermore, even though document (17) teaches that such a condensation product hydrolyses easily in the presence of humidity (column 1, lines 41 to 44) and document (10) teaches that the condensation product exchanges the perfume aldehyde with any malodorous aldehyde present in the composition (page 3, lines 20 to 27), the skilled person would have learnt from these documents that these condensation products are able to provide the treated fabric with a long-lasting substantive aldehyde or ketone perfume fragrance and that they are **generically applicable** into a fragrance suitable for the detergent field.

Since the application field of documents (10) and (17), i.e. the detergent field, encompasses also that of fabric softening compositions, the Board cannot agree with the Respondent's submission that the present case is similar to that of decision T 570/91 (point 4.4. of the reasons), according to which it is not permissible to combine the starting point for the evaluation of inventive step with a technical teaching concerning the solution of technical problems related to a very different technical field.

Finally, the skilled person, knowing from document (2) that the amino-functional polymer contained in the disclosed acidic fabric softening compositions renders the hydrophilic perfumes, encompassing also the condensation products of amines and aldehydes, substantive to the fabric treated, would have at least tried the condensation products of amines and aldehydes of document (10) and (17) into such compositions with the expectation that they could provide the fabric with a long-lasting fresh note of perfume aldehyde.

The Board concludes that the subject-matter of claim 1 lacks an inventive step.

2. Respondent's first auxiliary request

2.1 Articles 84 and 123(2) and (3) EPC

The same conclusions with regard to the main request (see points 1.1 and 1.2 above) apply *mutatis mutandis* to this request.

2.2 Inventive step

2.2.1 Claim 1 according to the first auxiliary request differs from claim 1 according to the main request insofar as the amine compound is selected from polyethyleneimines; 2,2',2"-triaminotriethylamine; 2,2'-diamino-diethylamine; 3,3'-diamino-dipropylamine, 1,3 bis aminoethyl-cyclohexane; poly[oxy(methyl-1,2-ethanediyl)], α -(2-aminomethylethyl)- ω -(2-aminomethylethoxy)-; poly[oxy(methyl-1,2-ethanediyl)], α -hydro-)- ω -(2-aminomethylethoxy)-, ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol; C12 Sternamines; and mixtures thereof.

As regards the starting point for the evaluation of inventive step, the technical problem underlying the invention and its solution, the findings with regard to this subject-matter are the same as indicated in points 1.3.2 and 1.3.3 above.

2.2.2 The Board remarks that the condensation products of the specific amines of claim 1 are not disclosed in any of documents (2), (10) or (17).

In fact, document (2) relates only generically to condensation products of perfume aldehyde and amines with a molecular weight of 180 to 320 (page 12, lines 43 to 44) and discloses explicitly only aurantiol, which is the Schiff base of methylanthranilate and hydroxycitronellal (page 13, line 10) whilst documents (10) and (17) relate to the use of different classes of amines (see (10), page 4, line 15 to page 5, line 3; (17), column 1, line 26 and claim).

Therefore, the Board's conclusion with regard to the inventive step of the subject-matter of claim 1 according to the Respondent's main request is not applicable to the subject-matter of claim 1 according to the first auxiliary request.

2.2.3 According to the Appellant it would have been obvious for the skilled person to try, as alternative to the means disclosed in document (2), a condensation product of the polyethylenimines and any of the perfume aldehydes or ketones disclosed in that document as single components.

However, even though document (2) teaches generically that condensation products of aldehyde and amines could be used as perfuming components, the prior art does not contain any teaching that the condensation product of polyethyleneimine and perfume aldehydes or ketones could be a useful perfuming component.

The Board remarks also that none of the cited documents discloses any of the specific condensation products of claim 1.

Moreover, the prior art does not contain any teaching that such Schiff bases can be stable in an acidic fabric softening composition and deposit on the treated fabric in a substantive way and that they are also able, once on the fabric, to release gradually over time the perfume ketone or aldehyde.

Therefore, even considering the known hydrolytic capacity of imines and Schiff bases, illustrated for example in document (16), the skilled person would have not expected in the absence of a specific teaching that the selected condensation products of claim 1, once on the fabric, are able to release gradually over time the perfume ketone or aldehyde as convincingly shown by the Respondent (see point 1.3.3 above).

Since the above mentioned condensation products were not disclosed in the cited prior art and were used for properties which were unknown, the findings of the decisions T 130/89 (OJ 1991, 514, headnote) and T 192/82 (OJ 1984, 415, headnote I) cited by the Appellant, according to which the analogous use of a known material in a known manner for its known properties in order to obtain a known effect in a new combination cannot amount to an inventive step, do not apply to the present case.

Therefore, the Board finds that the prior art does not contain any hint that would have led the skilled person to try one of the condensation products of claim 1 in

an acidic fabric softening composition of document (2) with an expectation of success.

The Board thus concludes that the subject-matter of claim 1 according to the Respondent's first auxiliary request involves an inventive step.

The same reasoning applies to claims 2 to 9.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to maintain the patent on the basis of claims 1 to 9 of the first auxiliary request submitted during oral proceedings before the Board and the description to be adapted thereto.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke