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**Datasheet for the decision  
of 8 January 2009**

**Case Number:** T 0093/08 - 3.3.10

**Application Number:** 00926513.3

**Publication Number:** 1176942

**IPC:** A61K 7/46

**Language of the proceedings:** EN

**Title of invention:**

Cosmetic composition comprising cyclic oligosaccharide and  
fragrance

**Applicant:**

THE PROCTER & GAMBLE COMPANY

**Opponent:**

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**Headword:**

Cosmetic compositions/PROCTER & GAMBLE

**Relevant legal provisions:**

EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Amendments (not allowable) - not unambiguously derivable from  
application as filed"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0093/08 - 3.3.10

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.10  
of 8 January 2009

**Appellant:**

THE PROCTER & GAMBLE COMPANY  
One Procter & Gamble Plaza  
Cincinnati  
Ohio 45202 (US)

**Representative:**

Wilding, Richard Alan  
Procter & Gamble Technical Centres Limited  
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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 8 August 2007  
refusing European application No. 00926513.3  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** P. Gryczka  
**Members:** J. Mercey  
D. S. Rogers

## Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division refusing European patent application No. 00926513.3 with the European publication No. 1 176 942 and International publication No. WO 00/67718. Claim 1 of the set of claims underlying the contested decision (present sole request) read as follows:

"1. A cosmetic vapour spray or aerosol composition comprising:

- (a) greater than 0.2% by weight fragrance;
- (b) cyclic oligosaccharide having an average degree of substitution of at least 1.6;
- (c) water

wherein the cyclic oligosaccharide has a solubility in water of at least 100g/100ml at 25°C and 1 Atm."

II. The Examining Division held that the claimed subject-matter lacked inventive step (Article 56 EPC).

III. In a communication annexed to the summons to oral proceedings dated 22 September 2008, the Board indicated that the disclosure in the application as filed (Article 123(2) EPC) for the combination of the features "vapour spray or aerosol", "water" and "wherein the cyclic oligosaccharide has a solubility in water of at least 100g/100ml at 25°C and 1 Atm" introduced into claim 1 would need to be addressed at the oral proceedings.

IV. The Appellant did not indicate in its Statement of Grounds of Appeal where the basis for the combination

of features introduced into claim 1 may be found in the application as filed, and in its reply dated 3 December 2008 to the communication of the Board, it indicated that it did not wish to add to the facts, arguments and evidence on file, nor would it attend the oral proceedings.

- V. The Appellant requested that the decision under appeal be set aside and the patent be granted on the basis of the claims refused by the Examining Division.
- VI. At the end of the oral proceedings, which were held on 8 January 2009 in the absence of the Appellant, the decision of the Board was announced.

### **Reasons for the Decision**

- 1. The appeal is admissible.
- 2. *Article 123(2) EPC*
  - 2.1 In order to determine whether or not an amendment to a claim offends against Article 123(2) EPC, it has to be examined whether technical information has been introduced which a skilled person would not have been able to directly and unambiguously derive from the application as filed.
  - 2.2 Claim 1 is derived from original claim 1, wherein the features "vapour spray or aerosol", "water" and "wherein the cyclic oligosaccharide has a solubility in water of at least 100g/100ml at 25°C and 1 Atm" have been introduced. Basis for each of these individual

features is page 12, line 12, page 10, line 30 and page 7, lines 28 to 29 together with page 8, line 2, respectively. However, since present claim 1 requires that these features are combined, their combination must also be directly and unambiguously derivable from the application as filed.

2.3 At page 10, line 30 of the application as filed, in a section of the application with the heading "Water", it is disclosed that the compositions of the present invention "may also comprise water". However, there is no indication that compositions containing water should be in aerosol form. At page 12, lines 11 to 12 of the application as filed, in a section of the application with the heading "Product Forms", it is disclosed that the compositions of the present invention may take any form suitable for cosmetic use, aerosols being only one of several forms then specifically listed. There is, however, no indication in this passage of aerosols containing water, nor is there any specific link between the passage relating to the aerosols at page 12, line 12 and that relating to the water at page 10, line 30 of the application as filed, and none was indicated by the Appellant. Moreover, the only examples of aerosols in the application as filed are at page 14, lines 1 to 3, wherein it is indicated these may be prepared by adding a propellant such as propane butane to the deodorants of Examples VII to IX, none of these examples containing water at all. Therefore, the application as filed does not directly and unambiguously disclose an aerosol comprising water, which is the subject-matter of the amended claim 1.

- 2.4 In addition, the combination of an aerosol with a cyclic oligosaccharide having a specific solubility in water is also not disclosed in the application as filed, there being no specific link between the passage describing the aerosol at page 12, line 12 and that describing the oligosaccharide at page 7, line 28 to page 8, line 2 of the application as filed.
- 2.5 The Board concludes that claim 1 is amended in such a way that it introduces new technical information with the consequence that subject-matter extending beyond the application as filed is added, contrary to the requirements of Article 123(2) EPC. The Appellant's sole request is thus not allowable.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

C. Rodríguez Rodríguez

P. Gryczka