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**Datasheet for the decision  
of 30 March 2011**

**Case Number:** T 1177/08 - 3.3.06

**Application Number:** 01968646.8

**Publication Number:** 1317524

**IPC:** C11D 17/04

**Language of the proceedings:** EN

**Title of invention:**

Laundry articles and methods for combined cleaning and care of fabrics

**Patentee:**

THE PROCTER & GAMBLE COMPANY

**Opponent:**

UNILEVER PLC / UNILEVER NV

**Headword:**

Multicompartment container/PROCTER

**Relevant legal provisions:**

-

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

EPC Art. 56

**Keyword:**

"Inventive step (main request and first auxiliary request): no  
- further embodiments of the prior art"

"Inventive step (second auxiliary request): yes - non-obvious  
modification"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1177/08 - 3.3.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.06  
of 30 March 2011

**Appellants:** UNILEVER PLC / UNILEVER NV  
(Opponents) Unilever House, Blackfriars/Weena 455  
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**Representative:** Elliott, Peter William  
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**Respondent:** THE PROCTER & GAMBLE COMPANY  
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**Representative:** Morelle, Evelyne Charlotte Isabelle  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
28 April 2008 concerning maintenance of the  
European patent No. 1317524 in amended form.

**Composition of the Board:**

**Chairman:** P.-P. Bracke  
**Members:** P. Ammendola  
J. Geschwind

## 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. 1 317 524 according to the then pending main request of the Patent Proprietor.

II. The Opponents had sought revocation of the granted patent on the grounds of, *inter alia*, lack of inventive step. They had cited in support of their objections, *inter alia*, the documents:

(2) GB-A-1 038 492,

and

(4) EP-A-0 157 653.

III. The main request filed by the Patent Proprietor during the opposition proceedings comprised ten claims (hereinafter claims as maintained).

Claim 1 **as maintained** reads:

"1. *A laundry article for use in providing fabric care benefits to fabrics, the article comprising:*

- a) *a container having at least two compartments; and*
- b) *a fabric care composition in a first compartment, said fabric care composition having at least one fabric care active selected from the group consisting of*

*cationic fabric softener and cationic silicones and*  
c) *a fabric cleaning composition in a second compartment, said fabric cleaning composition having at least one fabric cleaning agent,*

*wherein the fabric cleaning and fabric care compositions are in the form of a liquid."*

During the opposition proceedings the Patent Proprietor submitted two sets of amended claims respectively labelled as first and second auxiliary requests.

Claim 1 of this **first auxiliary request** only differs from claim 1 as maintained in that the wording of this latter reading "*at least one fabric cleaning agent,*" has been replaced by "*at least one fabric cleaning agent selected from the group consisting of surfactant, builder, deterative enzymes, bleach systems, optical brighteners, fluorescent whitening agents, chelants, sequestrants, alkalinity, soil suspending agents, soil release agents, and stain resistance agents,*".

Claim 1 of the **second auxiliary request** only differs from claim 1 of the first auxiliary request in that the final wording of the this latter reading "*a liquid.*" has been replaced by "*a liquid; and wherein the compositions of a first and a second compartment further comprises at least one signal generating agent, wherein the signal generation agent generates a signal upon effective mixing of said compositions.*".

The claims 2 to 6 of the second auxiliary request define preferred embodiments of the laundry article of claim 1. The remaining claims 7 to 9 of this request read as follows:

"7. *The use of an article according to any of the preceding claim; to deliver to a laundry solution a uniform composition containing at least one fabric cleaning agent and at least one fabric care active, wherein said fabric cleaning agent and fabric care active, is incompatible or partially instable, in the presence of the other.*"

"8. *A method of using an article according to any one of Claims 1-6 to launder fabrics, the method comprising the steps of causing a consumer to mix two compositions and to wait for a signal that mixing has been effective before using the combined composition in a laundering operation.*"

"9. *A laundry kit comprising an article according to any one of claims 1-6 and a dispensing device for mixing the fabric cleaning and/or fabric care compositions and dispensing the mixture into a laundry solution.*"

IV. The Opposition Division decided, *inter alia*, that the subject-matter of claim 1 as maintained was not directly and unambiguously disclosed in the available prior art documents.

As to the issue of inventive step, the Opposition Division considered, *inter alia*, that the patent-in-suit addressed the problem of rendering available a

multi-compartment laundry article containing, in a first compartment, a fabric care composition (hereinafter **care composition**) comprising a cationic fabric care active (hereinafter **cationic active**) and, in a second compartment, a fabric cleaning composition (hereinafter **cleaning composition**) comprising fabric cleaning agent (hereinafter **cleaning agent**) incompatible with the cationic active. The example on page 3 of document (2) containing amphoteric actives was considered to disclose the closest prior art, from which the article of claim 1 as maintained only differed in that the fabric care active was instead cationic. The Opposition Division considered that the effect of this difference was not discernible and, thus, that the technical problem solved was just the provision of a further single package for laundry detergent compositions which allowed for the packaging of mutually incompatible cationic actives and cleaning agents. Nevertheless, in the opinion of the Opposition Division, the combination of documents made by the Opponents would not demonstrate the obviousness of the subject-matter of the claims as maintained.

- V. The Opponents (hereinafter Appellants) lodged an appeal against this decision.

With letter of 16 January 2009 the Patent Proprietor (hereinafter Respondent) filed three sets of claims respectively labelled as main request and first and second auxiliary request. These sets of claims were identical to the correspondingly labelled sets already filed during the opposition proceedings (see above section III).

At the oral proceedings before the Board the Appellants referred, *inter alia*, to document (4) and the Respondent - after having drawn the attention of the Board on the fact that document (4) had previously been mentioned only in the written submissions filed during the opposition proceedings - commented extensively on this citation as well.

- VI. The Appellants contested the findings of the Opposition Division as to the novelty and the inventiveness of the subject-matter of claim 1 as maintained.

As to the issue of inventive step the Appellants noted, in particular, that this claim was so broadly formulated to allow the presence of mutually incompatible ingredients in the same compartment as well as for articles containing only ingredients that were not incompatible. Hence, it was justified to conclude that the sole technical problem possibly relevant for the whole range of claimed articles was the provision of an alternative to the previously known multi-compartment articles for separately transporting a plurality of laundry compositions.

Since the disclosure of document (4) also encompassed multi-compartment articles suitable for transporting laundry compositions which were possibly liquid and possibly contained cationic actives, it was reasonable to carry out the assessment of inventive step starting from this prior art.

In the opinion of the Appellants the subject-matter of claim 1 only represented a further embodiment of the prior art disclosed in document (4) and, hence, was

just an obvious alternative to the embodiments of the prior art already explicitly described in this citation.

The same reasoning demonstrated the lack of inventive step of the subject-matter of claim 1 of the first auxiliary request.

As to claim 1 of the second auxiliary request, the requirement of a signal generation upon effective mixing was obscure and the corresponding description in the patent specifications proved that it embraced even those changes that would inevitably occur upon mixing any pair of detergent compositions, in particular those containing incompatible ingredients. Hence, no clear and new technical effect suitable for the acknowledgement of an inventive step was implied by such requirement.

VII. The Respondent refuted these objections by arguing that the technical problem underlying the invention consisted in the provision of a liquid laundry composition which although containing a cationic softener would not display the compromised cleaning and softening effect provided by the "two-in-one" liquid laundry compositions of the prior art. It stressed that document (2), which disclosed the closest prior art in respect of the problem of simultaneously delivering mutually incompatible ingredients, was silent as to the use of cationic actives and, thus, could not possibly have rendered obvious the subject-matter of claim 1 as maintained.



If the skilled person would instead have started from the prior art disclosed in document (4), he/she would rather have found therein the instruction to combine the cationic active with the cleaning agent and not that of separating them.

As to claim 1 of the first auxiliary request the Respondent stressed that the wording added therein limited the claimed subject-matter to articles containing cleaning agents manifestly incompatible with the cationic active.

With regard to claim 1 of the second auxiliary request the Respondent argued that the skilled person would understand which kind of agents produced a signal clearly indicating to the final consumer, when the pre-mixing of the care composition with the cleaning composition was sufficient to ensure the aimed cleaning and fabric care effects. No such signal generation was explicitly described or indirectly suggested in the available prior art.

VIII. The Appellants requested that the decision under appeal be set aside and the patent be revoked.

The Respondent requested that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of the claims of any of the first or second auxiliary request as filed with letter of 16 January 2009.

## Reasons for the decision

### *Respondent's main request*

1. The Board concurs with the finding of the Opposition Division that the subject-matter of claim 1 as maintained is not anticipated by the available prior art. No further details need to be given in this respect since this claim is found not allowable under the provisions of Article 56 EPC (1973) for the reasons given here below.
  
2. Inventive step (Article 56 EPC (1973)): claim 1 as maintained
  - 2.1 This claim defines a multi-compartment laundry article separately containing a liquid care composition and a liquid cleaning composition which respectively comprise a cationic active and a cleaning agent (see above section III of the Facts and Submissions).
  
  - 2.2 The patent mentions in paragraphs [0005] to [0008] a number of problems possibly addressed by one or another of the possible embodiments of the claimed subject-matter, inclusive of the stability problems observable when some of the detergent ingredients would turn out to be incompatible.

However, present claim 1 requires neither the presence of mutually incompatible ingredients in the separated compartments, nor the absence of mutually incompatible ingredients within the same compartment. Thus, the claimed subject-matter embraces, *inter alia*, embodiments in which no mutually incompatible

ingredients are present, as well as embodiments in which the negative effects of ingredient incompatibility are necessarily present. The same is also confirmed by the explicit teaching of the paragraphs of the patent description already cited above (see, in particular, the passages in paragraphs [0007] and [0008] respectively reading "*Thus in certain embodiments of the present invention there is an underlying theme of separating ingredients, e. g., certain fabric care actives from each other or certain fabric cleaning agents from certain fabric care actives, even when there is no fundamental incompatibility thereof ...*" and "*In yet another mode or context, it has been discovered that a dissymmetry can be introduced between (a) the technically operational compatibilities or incompatibilities of fabric care actives and/or fabric cleaning agents and (b) a signaling system. In this mode, a group of ingredients (e. g., comprising fabric cleaning agents) which are **not** necessarily optimally stable or compatible together are copackaged in a first compartment and another group of ingredients (e. g., comprising fabric care actives) also **not** necessarily optimally stable or compatible together are copackaged together in a second compartment. In this mode, it is **not** optimal compatibility of materials in each compartment which is sought, but rather, good efficacy of the signaling (e. g., via odor, color, phase, temperature changes, etc.) which occurs when the compositions are mixed.*" emphasis added by the Board).

Hence, it is apparent to the Board that, contrary to the finding of the Opposition Division and contrary to the statements of the Respondent, the problem of

obtaining an uncompromised combination of softening and cleaning when using mutually incompatible cleaning agents and cationic actives cannot possibly be relevant for many possible embodiments of the claimed subject-matter.

This is particularly evident when considering that, as observed by the Appellant, the broad definition of claim 1 as maintained allows, for instance, for the presence of surfactants in the care composition (this is also explicitly confirmed not only by a general statement in paragraph [0057] but also by the list of ingredients of the fabric care compositions used in the patent examples). Thus, this claim embraces the possibility of having as compositions, separately contained in the claimed article, any pair of conventional liquid detergent compositions, as long as one of them also comprises some cationic active, and regardless of the relative compatibility among the ingredients present in the same compartment or in different compartments.

Accordingly, the Board concurs with the Appellants that the sole technical problem possibly addressed by these embodiments of the claimed subject-matter is just the provision of an article suitable for separately containing two or more laundry compositions. Therefore, the prior art of departure for the assessment of inventive step is to be determined taking into account this technical problem (and not that of the instability possibly resulting from the non-mandatory presence of incompatible ingredients).

2.3 The technical problem of rendering available articles suitable for separately containing two or more laundry compositions has already been solved in the prior art. In particular, multi-compartment laundry articles are already disclosed in document (2) as well as in document (4).

However, while the former citation is silent as to the possible presence therein of cationic actives, document (4) discloses among the examples of the compositions to be possibly separately contained e.g. in the two-compartment of figure 17, a first sort of liquid cleaning composition (for pre-spotting) and a second sort of liquid cleaning composition (for the main wash) whereby this latter may also possibly contain a cationic active (see in document (4) e.g. the pre-spotter of general formula "III" at page 21 and the cleaning composition of general formula I at page 27). Hence, the features characterizing the presently claimed subject-matter are all disclosed singularly (i.e. not in combination) as possible alternatives for realizing the prior art of document (4) and, thus, the claimed subject-matter is encompassed within the more general teaching of this citation. Accordingly, the Board concludes, contrary to the finding of the Opposition Division and the opinion of the Respondent, that this prior art (and not that disclosed in document (2)) represents the most reasonable starting point for the assessment of inventive step.

2.4 Hence, it must be assessed whether the claimed subject-matter represents an obvious solution to the technical problem of providing **further** articles suitable for separately containing two or more laundry compositions,

i.e. if the claimed subject-matter represents an obvious alternative to the articles disclosed in document (4) or not.

As indicated already above, the features characterizing the claimed subject-matter, although not already specifically disclosed in combination in document (4), are nevertheless encompassed by the general technical teaching of this document.

The Board finds that no inventive activity of the skilled person is required for solving the posed technical problem by simply realizing further embodiments of the prior art, e.g. by arbitrarily selecting among the possible detergent compositions to be placed in the two compartment of the article of figure 17 of document (4) those mentioned in that same document that are liquid and wherein at least one contains a cationic active.

Hence, the skilled person searching for an alternative to the prior art of document (4) arrives in obvious manner at the subject-matter of claim 1 under consideration.

Accordingly, claim 1 as maintained is found to lack an inventive step and, thus, the main request of the Respondent is found not allowable because it violates Article 56 EPC (1973).

*Respondent's first auxiliary request*

3. Inventive step (Article 56 EPC (1973)): claim 1 of the first auxiliary request

The Board notes that the additional definition of the general classes of compounds to be used as cleaning agents introduced in claim 1 of this request (see above section III of the Facts and Submissions) does not imply that some of the separately present ingredients must be incompatible and/or that no pair of mutually incompatible ingredients must be present in the same compartment. Moreover, also such more restricted claim still embraces, for instance, the possibility of using as cleaning composition of the claimed article any pre-spotter according to the general formula "III" of document (4).

Hence, the reasoning given above as to the sole technical problem possibly addressed and solved over the whole range of claim 1 as maintained and as to the obviousness of the solution proposed in view of document (4), applies identically to the subject-matter of claim 1 of the first auxiliary request.

Accordingly, also this latter is found to lack an inventive step and, thus, also the first auxiliary request is found not allowable because it violates Article 56 EPC (1973).

*Respondent's second auxiliary request*

4. The Board is satisfied that the amendments resulting in the set of claims according to this request do not introduce any new unclarity and are allowable in view of Articles 123(2) and (3) EPC. The Board also finds that the subject-matter of these claims is not anticipated in the prior art.

No further details need to be given in these respects since the allowability of the Respondent's second auxiliary request has only been disputed by the Appellants in view of the inventiveness of claim 1.

5. Inventive step (Article 56 EPC (1973)): claim 1 of the second auxiliary request

This claim additionally requires the two compositions separately contained in the claimed multi-compartment laundry article to be able to generate a signal upon their effective mixing (see above section III of the Facts and Submissions).

The Board finds unconvincing the unsupported allegation of the Appellants that such signal generation would inevitably occur upon mixing any pair of detergent compositions, in particular of those containing incompatible ingredients.

In the opinion of the Board, even in the absence of a very precise definition of the term "*effective mixing*", the skilled reader of claim 1 of this request, who is also aware of the disclosure given e.g. in paragraphs [0006], [0008] and [0068] of the patent-in-suit, would understand that the claimed articles must contain ingredients which upon sufficient mixing of the two separated compositions by the final consumer (during the operations preceding the actual laundry washing) generate a signal that **must be clearly perceivable and indicative that a substantially uniform combination has been produced**. Therefore, the concept of "signal generation" as used in present claim 1 does not embrace



whatever change of physical-chemical properties, but only those allowing the normal consumer to easily and clearly identify the achievement of a more or less uniform combination the two compositions.

Hence, and in the absence of any document describing that the mixing of two laundry compositions results in changes of physical-chemical properties inevitably apparent to the final user and indicative of substantial mixing, the Board has no reason to consider unreasonable the statements in the already cited paragraphs [0006], [0008] and [0064] of the patent-in-suit, which indicate that special combinations of ingredients are to be chosen in order to generate such a signal (like e.g. the formation of a foam or mousse caused by effervescent ingredients or a remarkable change in colour) and that it is advantageous to uniformly pre-mix the two compositions rather than adding them separately to the washing liquor.

Hence, the Board finds it credible that claimed subject-matter solves vis-à-vis the prior art disclosed in document (4) also the technical problem of rendering more advantageous the simultaneous use of two or more laundry compositions in the same washing operations.

Since none of the citations referred to by the Appellants mentions the generation of a signal indicative of the uniform pre-mixing of two distinct laundry compositions to be used in the same washing process, the subject-matter of claim 1 of this request solves the posed technical problem by a non-obvious modification of the prior art of departure.

Accordingly, the Board concludes that the subject-matter of this claim is not rendered obvious by the available prior art.

6. Inventive step (Article 56 EPC (1973)): claim 2 to 9 of the second auxiliary request

These claims (see above section III of the Facts and Submissions) are either directed to preferred embodiments of the article of claim 1 (claims 2 to 6), or to the use of this article to deliver a uniform combination of the two compositions to a laundry solution (claim 7), or to the method of using this article comprising causing the consumer to mix the two compositions and to wait for the signal before using the resulting mixture in a laundry operation (claim 8) or a laundry kit comprising this article and a device for dispensing the mixture of the two compositions.

Hence, the Board finds that their subject-matter is not rendered obvious by the available prior art for substantially the same reasons as already given above in respect of the subject-matter of claim 1.

Accordingly, the subject-matter of the claims according to the second auxiliary request is also found to comply with the requirements of Article 56 EPC (1973).

**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 with the order to maintain the patent on the basis of the second auxiliary request filed with letter of 16 January 2009 and the description to be adapted.

The Registrar:

The Chairman:

D. Magliano

P.-P. Bracke