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**Datasheet for the decision
of 8 September 2011**

Case Number: T 1948/09 - 3.3.06

Application Number: 00942965.5

Publication Number: 1187901

IPC: C11D 11/00

Language of the proceedings: EN

Title of invention:

Processes for making granular detergent in a fluidized bed granulator having recycling of improperly sized particles

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Henkel AG & Co. KGaA

Headword:

Geometric mean particle diameter/PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter (yes)"

Decisions cited:

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Catchword:

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Case Number: T 1948/09 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 8 September 2011

Appellant:
(Patent Proprietor)

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Representative:

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Respondent:
(Opponent)

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Representative:

-

Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 22 July 2009
revoking European patent No. 1187901 pursuant
to Article 101(3)(b) EPC.

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
J. Geschwind

Summary of Facts and Submissions

- I. The present appeal is from the decision of the Opposition Division to revoke the European patent no. 1 187 901 concerning a process for making a granular detergent composition.
- II. In its notice of opposition the Opponent sought revocation of the patent *inter alia* on the grounds of Article 100(c) EPC.
- III. The Opposition Division found in its decision that a process for preparing a granular detergent composition comprising 100% of particles having the selected particle size characteristics of claim 1 was not disclosed in the original application documents.

Therefore, claim 1 according to the then pending main request (claims 1 to 8 submitted with letter of 17 December 2007) contravened the requirements of Article 123(2) EPC.

Claim 1 of this request reads as follows:

- "1. A process for making a granular detergent composition characterized by the steps of:
- a) providing at least one granular feed stream;
 - b) passing said granular feed stream into a fluidized bed granulator, wherein the fluidized bed granulator is operated at a Stokes Number of less than one, and wherein the conditions in the fluid bed granulator include:
 - (i) from 1 to 20 minutes of mean residence time;

(ii) from 100 to 600 mm of depth of unfluidized bed;
(iii) a droplet spray size of less than 2 times the particles size;
(iv) from 150 to 1600 mm of spray height from the fluid bed plate;
(v) from 1.0 to 3.0 m/s of fluidizing velocity; and
(vi) from 15 to 100°C of bed temperature;
c) at least partially agglomerating said feed stream in said fluidized bed granulator to form detergent agglomerates via the addition of a liquid binder material to the fluid bed;
d) sizing said detergent agglomerates to separate oversized particles from said detergent agglomerates; and
e) re-introducing said oversized particles to said process,
wherein the resultant particles have a geometric mean particle diameter of from 600 micrometers to 1,000 micrometers, and have a particle size distribution such that the geometric standard deviation is from 1.0 to 1.2."

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

The Appellant withdrew its request for oral proceedings with letter of 5 August 2011 and informed the Board that it would not be represented at the forthcoming oral proceedings, should they take place.

Oral proceedings were held before the Board on 8 September 2011 in the absence of the duly summoned Appellant.

V. The Appellant submitted in writing that

- the word "particles" meant the entire size range of a detergent final product or component or agglomerate;

- the geometric mean particle diameter was determined for a set of particles;

- moreover, the paragraph at page 10, lines 15 to 24, of the application as originally filed was not inextricably linked with the following paragraph reporting the preferred values for the geometric mean particle diameter and geometric standard deviation of the particles of the invention;

- therefore, it was clear from the application as filed that the geometric mean particle diameter and standard deviation of claim 1 were preferred features of the entire distribution of particles resulting from the process;

- claim 1 thus complied with the requirements of Article 123(2) EPC.

VI. The Respondent (Opponent) submitted in writing and orally that

- the discussed paragraphs on page 10 of the original application documents had to be read in combination;

- there was no disclosure in the original application documents of a composition consisting to 100% of particles with the geometric mean particle diameter and geometric standard deviation of claim 1;

- moreover, it was clear from the definition given for the word "particles" that it could relate also to a portion of the final detergent product;

- claim 1 thus contravened the requirements of Article 123(2) EPC.

VII. The Appellant requested in writing that the decision under appeal be set aside, the main request before the Opposition Division (claims 1 to 8 submitted with letter of 17 December 2007) be held not to contravene the requirements of Article 123(2) EPC, and the case be remitted to the department of first instance for consideration of novelty and inventive step.

VIII. The Respondent requests that the appeal be dismissed.

Reasons for the Decision

1. Main request

1.1 Article 123(2) EPC

1.1.1 Claim 1 according to the main request relates to a process for making a granular detergent composition characterized by the steps a) to e), wherein the resultant particles have a geometric mean particle diameter of from 600 micrometers to 1,000 micrometers, and have a particle size distribution such that the geometric standard deviation is from 1.0 to 1.2.

Therefore, the wording of claim 1 encompasses a process wherein the final granular detergent composition consists to 100% of the particles resulting from the process steps a) to e) having the particle size characteristics indicated in claim 1.

It is undisputed that the paragraph on page 10, lines 25 to 31, of the original application documents discloses the geometric mean particle diameter and the geometric standard deviation of claim 1 as being most preferred features of the particles of the invention.

However, the preceding paragraph on page 10, lines 15 to 24, discloses that the granular detergent composition of the invention achieves the desired benefits via the process of the invention and the control or selection of the geometric mean particle diameter of **certain levels** of particles in the composition. This paragraph explains that these benefits can be achieved when at least about 50% and most preferably at least about 95% by weight of the total particles in the detergent product have the selected mean particle size diameter, so that a **substantial portion** of the granular detergent product has the uniform size providing the desired benefits.

The Board thus finds that the last mentioned selected mean particle size diameter responsible for the achieved benefits can only be the geometric mean particle diameter, whose selection is mentioned beforehand in the same paragraph as being indeed essential for the achievement of such benefits.

Moreover, the paragraph on page 10, lines 15 to 24, states explicitly that only **certain levels** of particles of the composition and a **substantial portion** of the granular detergent product must have the selected geometric mean particle diameter. The levels of particles explicitly disclosed are those mentioned above and do not include a level of 100% of the total granular detergent composition.

In the light of the disclosure of this paragraph, the particle size features disclosed in the following paragraph on page 10, lines 25 to 31, can only be interpreted as relating to the levels of particles mentioned in the preceding paragraph. This is confirmed by original process claim 11, which was the only claim containing values for the geometric mean particle diameter and geometric standard deviation of the detergent particles prepared by the claimed process and requiring, in agreement with page 10, line 20, that only at least 50% by weight of such particles have selected particle size features.

Therefore, the Board concludes that the above mentioned two paragraphs of page 10 have to be read in combination and do not disclose a granular detergent composition consisting to 100% of particles having the characteristics reported in claim 1.

- 1.1.2 According to the definition given on page 3, lines 16 to 25 of the description, the word "particles" means the entire size of a detergent final product or the entire size range of discrete particles or agglomerates, which are considered themselves as discrete particles (see page 3, lines 23 to 25); this word does not refer

to a size fraction (less than 100% of the entire size range) unless the size fraction represents 100% of a set of discrete particles.

Moreover, the phrase "geometric mean particle diameter" means the geometric mass median diameter of a set of discrete particles (page 3, lines 26 to 27).

Therefore, it is clear from these passages that the geometric mean particle diameter as well as the associated geometric standard deviation relates to a set of discrete particles which does not constitute necessarily 100% of the final detergent product.

These definitions thus are coherent with the passages of page 10 discussed above according to which only a **substantial portion** of the final detergent product, i.e. a set of discrete particles which does not represent 100% of the final product, has the selected geometric particle diameter and geometric standard deviation.

The Board thus concludes that also considering the definition of the word "particles" given on page 3, the original application documents do not disclose the preparation of a granular detergent composition wherein 100% by weight of the final product consists of particles having the characteristics of claim 1 according to the main request.

Therefore, claim 1 according to the main request contravenes the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

P.-P. Bracke