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**Datasheet for the decision  
of 10 May 2011**

**Case Number:** T 2014/09 - 3.3.06

**Application Number:** 03734595.6

**Publication Number:** 1470213

**IPC:** C11D 3/382

**Language of the proceedings:** EN

**Title of invention:**  
DETERGENT COMPOSITIONS

**Patentee:**  
Unilever PLC, et al

**Opponent:**  
The Procter & Gamble Company

**Headword:**  
Aloe vera granules in detergent compositions/UNILEVER

**Relevant legal provisions:**  
EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**  
EPC Art. 83, 84, 56

**Keyword:**  
"Patent sufficiently disclosed (yes)"  
"Clarity of the claims (yes)"  
"Amendments beyond original disclosure (no)"  
"Inventive step (yes)"

**Decisions cited:**  
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**Catchword:**  
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Case Number: T 2014/09 - 3.3.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.06  
of 10 May 2011

**Appellant:** The Procter & Gamble Company  
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**Respondent:** Unilever PLC  
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and

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
16 July 2009 concerning maintenance of European  
patent No. 1470213 in amended form.**

**Composition of the Board:**

**Chairman:** P.-P. Bracke  
**Members:** E. Bendl  
U. Tronser

## Summary of Facts and Submissions

- I. The appeal is from the decision of the Opposition Division to maintain the European patent no. 1 470 213 in amended form.
- II. In opposition proceedings the Opponent objected to lack of novelty and inventive step, considered the amended set of claims filed by the Proprietor to raise problems with regard to Articles 83, 84 and 123(2) EPC and submitted inter alia documents
- D1 = US-A-4 339 356 and  
D9 = WO-A-00/45788.
- III. The amended set of claims filed in opposition procedure consists of a total of 20 claims, the only independent Claim 1 reads as follows:
- "1. A particulate detergent composition, which comprises a minor amount of a herbal extract of aloe vera beneficial to human skin, characterised in that the herbal extract is present in the form of granules comprising an aqueous solution of the herbal extract of aloe vera absorbed into and/or adsorbed onto a granular inorganic carrier material, and the granules have in 1 wt% aqueous solution pH not exceeding 9.0."
- IV. The Opposition Division decided that this amended set of claims meets the requirements of the EPC.
- V. The Opponent/Appellant filed on 25 September 2009 an appeal against this decision, paid the appeal fee on the same day and objected in the grounds of appeal,

filed on 25 November 2009, that the requirements of Articles 83, 84, 123(2) and 56 EPC still were not met.

- VI. The Proprietor/Respondent disputed the Appellant's objections and maintained the amended set of claims of the opposition procedure as the main request.
- VII. The oral proceedings before the Board took place on 10 May 2011 in the absence of the Respondent, as announced with his letter of 25 February 2011.
- VIII. The **Appellant's main arguments** were as follows:

*Article 123(2) EPC*

The passage "herbal extract of aloe vera" in Claim 1 has not been originally disclosed.

*Article 83 EPC*

One possible interpretation of Claim 1 is, that it is the minor amount (of aloe vera), which leads to the effect beneficial to the skin. Given the extreme low concentration of aloe vera and the lack of any beneficial effect of aloe vera, no disclosure can be found how to achieve the effect.

*Article 84 EPC*

It is not clear whether the "herbal extract of aloe vera" in Claim 1 refers to aloe vera itself or only to a fraction thereof.

Claim 1 relates to an extract of aloe vera and Claim 2 to aloe vera per se. It is not clear whether those two compounds are identical.

Claims 18 to 20 relate to coloured granules containing aloe vera. It is unclear whether those granules are identical with the ones of Claim 1. It is furthermore unclear whether the "minor amount of extract of aloe vera" according to Claim 1 is identical with the aloe vera content referred to in Claims 18-20.

*Article 56 EPC*

D1 or alternatively D9 may be used as closest state of the art for the problem and solution approach.

When starting the problem and solution approach from D9, the problems to be solved are the uniform dosage and the alleged lack of stability of aloe vera. The proposed way of providing a uniform dosage is commonly known. Additionally, no proof has been filed by the Respondent as to the stability effect of aloe vera. Thus, an inventive step is not given.

IX. The **Respondent's main arguments** in the written procedure were as follows:

*Article 123(2) EPC*

With regard to the amendments, reference was made to page 4, lines 1 to 5 and page 7, lines 5 to 7 of the application as originally filed.

*Article 56 EPC*

D9 is the closest prior art. It does not hint towards a stabilised preparation comprising a carrier as presently claimed. The requirement of Article 56 EPC is therefore met.

- X. The Appellant requested that the decision under appeal be set aside and that the European patent no. 1 470 213 be revoked.

The Respondent requested in writing that the appeal be dismissed.

## **Reasons for the Decision**

1. *Article 123(2) EPC*
- 1.1 The Appellant argued, that aloe vera per se, as defined in the description on page 4, last paragraph, is a plant extract. He furthermore explained, that the wording of Claim 1 of the main request refers to "a herbal extract of aloe vera", which must consequently mean an extract of the plant extract aloe vera, i.e. a fraction of aloe vera. Such a fraction could allegedly not be found in the application as originally filed.
- 1.2 Although "aloe vera" is defined on page 4, lines 24 to 31 of the application as filed as a plant extract or as a dilution of pure juice as extracted from the plant, it is disclosed on page 6, lines 11 to 14 that "Although for simplicity the disclosure that follows refers specifically to aloe vera, the use of skin-beneficial herbal extracts other than aloe vera is also within the scope of the invention."
- 1.3 It is thus clear that in the application as filed the term "aloe vera" and "extract of aloe vera" are used interchangeably, and thus synonymous, as well as the terms "extract" and "herbal extract". As a consequence

thereof, the interpretation given by the Appellant cannot be followed.

1.4 Therefore, by using the term "herbal extract of aloe vera" in Claim 1 no subject-matter extending beyond the content of the application as filed has been added.

2. *Article 83 EPC (1973)*

2.1 The Appellant argued, that the amended passage "a minor amount of herbal extract of aloe vera beneficial to the human skin" could be interpreted in such a way, that the beneficial effect is the result of the **amount** of the extract of aloe vera applied. He concluded that, given the low concentration of aloe vera present in the detergent composition and due to the alleged lack of a beneficial effect of aloe vera to the skin, no teaching could be found in the patent-in-suit how to achieve an effect on the skin.

2.2 The Board cannot share this view. The Appellant explicitly confirmed that compositions as claimed can per se be prepared. Additionally the patent-in-suit states that aloe vera is well-known to impart benefits to the skin (paragraph [0015]).

2.3 Since the expression "herbal extract of aloe vera" is to be seen as identical with the term "aloe vera" in the present case and no proof has been submitted by the Appellant that non-beneficial aloe vera (fractions) exist or that low concentrations of aloe vera are not beneficial to the skin, the Board has no reason to doubt that the requirements of Article 83 EPC (1973) are met.

3. *Article 84 EPC (1973)*

3.1 The first objection raised by the Appellant concerned the alleged lack of clarity due to the use of the expression "a herbal extract of aloe vera", which could be interpreted as a fraction of aloe vera or which could mean the pure plant juice.

3.2 Given the reasoning stated above under item 1 of the present decision, this wording is considered to meet the requirements of Article 84 EPC (1973).

3.3 Furthermore it was criticized that Claim 1 referred to the extract of aloe vera, whereas Claim 2 mentioned aloe vera per se. According to the Appellant it was not clear whether both compounds were used interchangeably or whether the claims referred to two different compounds.

3.4 Again, since both terms are to be seen as synonyms, the wording of Claims 1 and 2 is considered by the Board to be clear.

3.5 Finally, the coloured granules mentioned in Claims 18-20 were seen in contradiction to the granules referred to in Claim 1. It was considered unclear whether the claims describe identical granules and whether the amount of aloe vera referred to the granules or to the total content of aloe vera in the preparation.

3.6 Given the synonymous use of "aloe vera" and "herbal extract of aloe vera" in the present case, the Board does not see any reason to conclude that the granules



referred to in Claims 18-20 are different from the ones of Claim 1, since the granules may also contain, besides aloe vera, a colorant (see paragraph [0028] of the patent-in-suit, under the heading "aloe vera granules"). Furthermore no hint towards the presence of different amounts of aloe vera in the detergent composition could be found.

3.7 The requirements of Article 84 EPC (1973) are consequently considered to be met.

4. *Article 54(1),(2) EPC (1973)*

The Appellant did not raise an objection concerning lack of novelty of Claim 1 in appeal procedure. The Board does not see any reason to deviate from this point of view.

5. *Article 56 EPC (1973)*

According to the problem and solution approach, which is used by the Boards of Appeal of the European Patent Office in order to decide on the question of inventive step, it has to be determined which technical problem the object of a patent objectively solves vis-à-vis the closest prior art document. It also has to be determined whether or not the solution proposed to overcome this problem is obvious in the light of the available prior art disclosures.

5.1 The patent-in-suit aims at providing detergent compositions in which (a) the message of mildness to the skin is reinforced by the incorporation of aloe vera, (b) accurate dosing and uniform distribution of

the aloe vera is achieved and (c) which avoid alkaline hydrolysis of aloe vera.

The Appellant cited either D1 or D9 as closest prior art documents.

D1 relates to the use of highly perfumed particles in detergent compositions. Aloe vera is not mentioned.

D9 describes detergent compositions comprising aloe vera which are characterized by improved mildness to the skin. The preparations may be in liquid or solid form, in the latter case spraying of compounds onto granules is mentioned.

Thus, D9 is considered to represent the closest state of the art.

- 5.2 D9 differs from the patent-in-suit in the explicit mentioning of absorbing/adsorbing the aloe vera extract into/onto the granules and the pH of a 1 wt% aqueous solution of the granules.

Hence, the technical problems underlying the patent-in-suit in the light of document D9 is to be seen in the provision of an even distribution of the aloe vera in the detergent composition and the prevention of hydrolysis of the aloe vera.

- 5.3 The proposed solution according to the patent-in-suit is defined in Claim 1.

- 5.4 The Appellant did not dispute that the problem of the invention has not been solved over the entire range claimed. The Board shares this opinion.
- 5.5 The remaining question to clarify is, whether it was obvious, when starting from D9, to prepare the composition according to Claim 1 of the patent-in-suit.

The proposed solution of absorbing/adsorbing an active compound (aloe vera) into/onto particles in order to provide a uniform distribution is common general knowledge and has for instance been described in D9 on page 13, last paragraph or in D1 (column 1, first paragraph).

However, the solution to the second problem, namely the stabilisation of aloe vera due to the use of a carrier with specific pH properties, is not considered to be derivable from the prior art documents. None of the prior art documents describes that aloe vera is sensitive to alkaline hydrolysis and that hydrolysis can be prevented by using a carrier which has in a 1 wt% solution a pH not exceeding 9.0.

The Appellant argued that the concentration of aloe vera is so low that it does not have any technical effect and that it would therefore not matter whether or not it is hydrolysed. Furthermore he concluded that no proof had been filed as to the prevention of hydrolysis by means of the present invention.

The patent-in-suit discloses in paragraph [0025] that aloe vera is sensitive to alkaline hydrolysis, since it has a tendency to split off an acetate group. This

finding is per se plausible, although the tendency of aloe vera to hydrolyse has not been disclosed in the available prior art documents. The Examining Division did apparently not contest that aloe vera is sensitive to alkaline hydrolysis and did not see a need for proof thereof. In opposition procedure the Appellant/Opponent did neither convincingly argue nor file any evidence that aloe vera is not sensitive to alkaline hydrolysis and/or that the hydrolysis of aloe vera is not prevented by the solution presently proposed. Also in appeal procedure no such convincing argumentation/proof was submitted. Since no such proof has been filed, the Board has no reason to doubt that hydrolysis of aloe vera has actually been prevented by the compositions claimed.

5.6 Since none of the prior art documents reports on the problem of sensitivity of aloe vera to hydrolysis in alkaline environment and thus none of the cited prior art documents proposes a method of preventing such hydrolysis, the proposed solution in Claim 1 cannot be suggested in any of these documents.

5.7 Therefore, the requirement of Article 56 EPC (1973) is considered to be met.

5.8 Since Claims 2 to 20 are dependent on Claim 1, the requirement of Article 56 EPC (1973) is considered to be met by these claims too.

**Order**

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

The appeal is dismissed.

The Registrar

The Chairman

D. Magliano

P.-P. Bracke