

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 4 October 2010**

Case Number: T 0903/10 - 3.3.06

Application Number: 05743021.7

Publication Number: 1753855

IPC: C11D 9/26

Language of the proceedings: EN

Title of invention:

Soap bars comprising synergistically high levels of both free fatty acid and filler

Applicant:

Unilever PLC, et al

Opponent:

-

Headword:

Soap bar composition/UNILEVER

Relevant legal provisions:

EPC Art. 111(1)
EPC R. 103(1)(a), 111(2)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Substantial procedural violation (yes): reasons for an auxiliary request missing in the decision under appeal"
"Remittal (yes)"
"Reimbursement of the appeal fee (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0903/10 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 4 October 2010

Appellant:

Unilever PLC
Unilever House
100 Victoria Embankment
London EC4Y 0DY (GB)

Representative:

Baker, Colin John
Potter Clarkson LLP
Park View House
58 The Ropewalk
Nottingham NG1 5DD (GB)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 14 October 2009
refusing European application No. 05743021.7
pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
J. Van Moer

Summary of Facts and Submissions

I. This appeal lies from the decision of the Examining Division to refuse European patent application no. 05 743 021.7, relating to soap bars.

II. The Examining Division found in its decision that the Applicant had been informed that the application did not meet the requirements of the EPC in the communications of 5 December 2008 and 30 April 2009.

Moreover, the Applicant had not submitted any comments or amendments in reply to the latest communication and had requested a decision according to the state of the file in the letter dated 7 September 2009.

The application thus had to be refused.

III. An appeal was filed against this decision by the Applicant (Appellant).

The Appellant submitted in writing a new set of claims.

Moreover, it submitted that the decision under appeal was incorrect since it had overlooked the Applicant's letter of 2 July 2009; moreover, the decision did not give any ground or basis for the refusal of the third auxiliary request submitted with letter of 7 September 2009.

Therefore, the Examining Division had committed a substantial procedural violation.

IV. In a telephone conversation with the Board the Appellant clarified that it did not request oral proceedings if the case would be remitted to the department of first instance because of a substantial procedural violation.

In view of this the Appellant's requests can be formulated as follows:

- that the decision under appeal be set aside and that the patent be granted on the basis of the claims submitted with the statement of the grounds of appeal;

or, in the alternative,

- that the case be remitted to the department of first instance for further prosecution.

Moreover, the Appellant requests the refund of the appeal fee.

Reasons for the Decision

1. Substantial procedural violation.

1.1 Under Rule 111(2) EPC, the decisions of the EPO must be reasoned. Therefore, it is the established jurisprudence of the Boards of Appeal of the EPO that failure to provide adequate reasoning in a decision is a substantial procedural violation justifying the reimbursement of the appeal fee (see Case Law of the Boards of Appeal of the EPO, 6th edition 2010, VII.E.17.4.4 on page 919 of the English version).

1.2 In the present case, the decision under appeal related in its reasons only to the arguments submitted in the communications of 5 December 2008 and 30 April 2009, which communications dealt only with claim 1 according to the then pending main request, first and second auxiliary requests and with the combination of the first and second auxiliary requests.

However, the Applicant filed with the letter of 7 September 2009 as third auxiliary request a new set of amended claims containing a more restricted claim 1.

The decision under appeal does not contain any reasons for the refusal of the claims submitted with letter of 7 September 2009.

Therefore, already on these grounds the Examining Division committed a substantial procedural violation since it refused the application without giving any reason with respect to the third auxiliary request.

2. Remittal and reimbursement of the appeal fee

2.1 Since the Appellant could not understand in the light of the decision whether the refusal of the third auxiliary request was justified or not, the Board finds it not appropriate to decide itself on the patentability of the claims submitted with the grounds of appeal which are different from those according to the above mentioned third auxiliary request. Moreover, it is fair in the present case not to deprive the Appellant of the opportunity to argue any issue

concerning the third auxiliary request or any other additional auxiliary request at two instances.

Therefore, the Board finds that it is appropriate to make use of its powers under Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

- 2.2 Furthermore, since the Examining Division committed a substantial procedural violation, it is equitable to reimburse the appeal fee (Rule 103(1)(a)).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke