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# Datasheet for the decision of 20 June 2011

**Case Number:** T 1744/10 - 3.3.06

**Application Number:** 97933510.6

**Publication Number:** 1002040

**IPC:** C11D 3/386

**Language of the proceedings:** EN

**Title of invention:**
Cleaning compositions comprising a specific oxygenase

**Patentee:**
THE PROCTER & GAMBLE COMPANY

**Opponent:**
Unilever N.V.

**Headword:**
Oxygenases containing cleaning composition/P&G

**Relevant legal provisions:**
EPC R. 80, 81(3)
EPC Art. 69(1)

**Relevant legal provisions (EPC 1973):**
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**Keyword:**
"Description adapted where appropriate to the amended claims (yes)"

**Decisions cited:**
T 1683/06

**Catchword:**
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b

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Beschwerdekammern | Boards of Appeal | Chambres de recours

**Case Number:** T 1744/10 - 3.3.06

**D E C I S I O N**
**of the Technical Board of Appeal 3.3.06**
**of 20 June 2011**

**Appellant**: (Opponent)
Unilever N.V.
Weena 455
NL-3013 AL Rotterdam (NL)

**Representative**:
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**Respondent**: (Patent Proprietor)
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**Representative**:
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**Decision under appeal:** **Interlocutory decision of the Opposition Division of the European Patent Office posted 26 May 2010 concerning maintenance of European patent No. 1002040 in amended form (Article 101(3)(a) EPC).**

**Composition of the Board:**

**Chairman:** P.-P. Bracke
**Members:** L. Li Voti
U. Tronser

**Summary of Facts and Submissions**

I. With the decision T 1683/06 the Board of Appeal had remitted the case to the department of first instance with the order to maintain the European patent No. 1 002 040 on the basis of the claims according to the main request filed during the oral proceedings of 11 February 2009 and a description to be adapted.

The Patent Proprietor submitted then amended pages 2 and 42 of the description and requested the maintenance of the patent on the basis of the following documents:

- pages 3, 5, 7 to 41 and 43 to 52 of the description as in the patent specification;
- pages 4 and 6 as filed during the oral proceedings on 12 September 2006;
- pages 2 and 42, received on 12 August 2009 with letter of 10 August 2009;
- claims 1 to 23 as filed during oral proceedings on 11 February 2009.

The Opponent, relying on the requirements of Rules 80 and 81(3) EPC, did not agree with the amended description.

II. The Opposition Division found in its decision that the amendments contained in pages 2 and 42 of the description complied with the requirements of Rules 80 and 81(3) EPC.

Therefore, the adapted description met the requirements of the EPC.

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

In the grounds of appeal the Appellant submitted that

- according to Article 69(1) EPC, the extent of protection conferred by a European patent is determined by the claims, whereby the description and drawings, if available, shall be used to interpret the claims;

- once the claims have been restricted in opposition proceedings (like in the present case), corresponding restrictions will have to be made to the description and drawings, if available, in order to make clear to the public that the scope of protection of the European patent has in fact been restricted;

- in the present case claim 1 had been restricted during opposition proceedings; however, the Patent Proprietor (hereinafter Respondent) had only submitted an amended page 42, wherein a spelling error had been corrected, and an amended page 2, wherein a phrase specifying the fourth embodiment of the invention had been added;

- the latter amendment was not occasioned by a ground of opposition and contravened Rule 80 EPC; moreover, the description did not contain the necessary adaptation to the restricted scope of claim 1 and had not been amended where appropriate as required by Rule 81(3) EPC.

IV. In its reply of 30 November 2010, the Respondent submitted that the scope of the claims was clear and that the description was in accordance with the amended claims.

However, it requested as an auxiliary request the maintenance of the patent on the basis of the claims filed during oral proceedings (on 11 February 2009) and new pages 2 and 3 of the description as amended in accordance with the Appellant's remarks. Therefore, the other pages of the description were intended to remain as in the patent specification.

Following the Board's communications of 21 December 2010 and 25 March 2011 and the further Appellant's submission of 25 February 2011, the Respondent requested that the patent be maintained on the basis of the claims filed during oral proceedings (on 11 February 2009) and of amended pages 2 to 4 and 6 to 8 of the description, which were submitted by fax of 13 April 2011 (the other pages of the description thus remaining as in the patent specification).

The Respondent submitted that these amendments overcame the deficiencies raised by the Appellant.

Oral proceedings were requested only in the case the Board would take a different decision.

V. With the letter of 25 May 2011 the Appellant agreed with the amendments to the description carried out by the Respondent.

The request for oral proceedings was only maintained in case that further amendments to the description would be made.

**Reasons for the Decision**

The Board remarks that the amendments to the description contained in the appealed version of the patent in suit and objected to by the Appellant have been removed.

Moreover, the amended pages of the description contain amendments suitable for adapting the text of the patent in suit, where appropriate, to the amended claim 1 submitted on 11 February 2009.

The Appellant has agreed with all the amendments carried out to the description by the Respondent and has not raised further objections.

Therefore, the Board concludes that the amended description complies with the requirements of the EPC.

**Order**

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

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent in the following version:

**Description, Pages**
5, 9 to 52 of the patent specification;
2 to 4 and 6 to 8 received by fax on 13 April 2011.

**Claims, Numbers**
1 to 23 filed during oral proceedings on 11 February 2009.

The Registrar: The Chairman:

D. Magliano P.-P. Bracke