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**Datasheet for the decision
of 22 September 2015**

Case Number: T 2644/11 - 3.3.07

Application Number: 05851991.9

Publication Number: 1841402

IPC: A61K8/73, A61K8/89, A61Q5/12

Language of the proceedings: EN

Title of invention:
PROCESS FOR PREPARING HYDROCOLLOIDS

Patent Proprietor:
Lubrizol Advanced Materials, Inc.

Opponent:
Glycomer GmbH

Relevant legal provisions:
EPC Art. 54, 56, 87, 100(b), 123(2)
RPBA Art. 12(4), 13

Keyword:
Late-filed evidence
Amendments - added subject-matter (no)
Sufficiency of disclosure - (no)
Priority - validity of priority date (yes)
Novelty - (yes)
Inventive step - non-obvious alternative

Decisions cited:
T 0153/85



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 2644/11 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 22 September 2015

Appellant: Glycomer GmbH
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
3 November 2011 concerning maintenance of the
European Patent No. 1841402 in amended form.**

Composition of the Board:

Chairman J. Riolo
Members: D. Semino
D. T. Keeling

Summary of Facts and Submissions

I. European Patent No. 1 841 402 claiming priority of the US patent application 11/014,424 filed on 16 December 2004 was granted on the basis of 25 claims, claim 1 reading as follows:

"1. A shampoo composition comprising:

- a) at least one minced polygalactomannan derivatized with a cationic substituent obtainable by:
 - i) swelling a split of cassia with water in the presence of a cationic derivatizing agent capable of reacting with the hydroxyl group in the galactose and mannose units in the galactomannan backbone of the split to form a swollen split, optionally followed by dispersing the swollen split in a water/organic solvent mixture, and
 - (ii) at least one step of wet-mincing the product obtained under (i);
- b) a cleansing surfactant selected from anionic, cationic, amphoteric, and zwitterionic deterative surfactants, and mixtures thereof;
- c) a water soluble silicone compound;
- d) water."

Dependent claims 10 and 13 defined shampoo compositions according to claim 1 wherein the water soluble silicone was a polysiloxane containing a backbone segment represented by a specific chemical formula (claim 10) or was selected from one or more compounds represented by six chemical formulae (claim 13).

II. A notice of opposition was filed against the granted patent requesting revocation of the patent in its entirety.

III. During opposition proceedings the following documents *inter alia* were cited:

D1: WO-A-2004/113390 (filed on 19 June 2004 claiming the priority date of 20 June 2003 and published on 29 December 2004)
D2: US-A-5 104 646
D3: US-A-5 106 609
D8: US-A-4 840 811
D15: US-A-4 753 659
D19: US-A-5 656 257
D23: US 11/014,424 (priority document of the patent in suit)
D25: WO-A-2004/112733

IV. The decision of the opposition division announced at the oral proceedings on 6 October 2011 concerning maintenance of the patent in amended form was based on a single set of claims filed as main request during these oral proceedings and a description adapted thereto.

Claim 1 of the main request corresponded to claim 1 as granted with the amendment of the term "obtainable" into "obtained" in feature a) and the specification of the water soluble silicone according to original claim 10 or original claim 13.

V. The decision of the opposition division can be summarised as follows:

a) Claim 19 of the main request met the requirements of Article 123(2) EPC, as the passage on page 27 of the description on which it was based was to be read in the context of the description in its entirety, which was clearly directed to shampoo

compositions, so that the skilled person would read the teaching of that passage as applicable to the hydrocolloids for use in the claimed shampoo compositions.

- b) D1, which was filed by the same applicant as the patent in suit prior to the claimed priority, did not disclose the specific silicones listed in claim 1 of the main request. The claimed priority (D23), which was identical to the patent under dispute as filed, related therefore to a new combination of features in comparison with D1 with the consequence that the priority was valid for the subject-matter of the main request.
- c) The subject-matter of the main request was novel over the disclosure of documents D1 and D25, which were both intermediate documents, as they did not disclose the specific water-soluble silicones of claim 1 of the main request.
- d) The subject-matter of claim 1 of the main request differed from the disclosure of D19, which was the closest prior art, in the use of a particular cassia hydrocolloid obtained by a process including a wet-mincing step. Assuming that no effect was shown, the technical problem was the provision of a further shampoo composition comprising cationic galactomannan hydrocolloids, surfactants and water-soluble silicones. The use of the cationic cassia obtained by the specific process was not an obvious alternative, as it was not part of the options available to the skilled person at the time of the invention. In view of this conclusion, it was not necessary to evaluate whether the examples of the patent demonstrated an

improvement leading to a different formulation of the technical problem.

- VI. The opponent (appellant) lodged an appeal against that decision and filed a statement of grounds in due time including as annex an additional piece of evidence (D29: US-A-2004/0076595).
- VII. In a communication sent in preparation for oral proceedings, the Board reviewed the submissions of the parties and in particular indicated with reference to inventive step of the main request that, with regard to the formulation of the problem, it was necessary to analyse the available evidence (including whether example 21 in the patent fell under claim 1) and that, as to obviousness, in case the proposed solution was recognised as not obvious also for the problem of providing a further composition (as concluded by the opposition division), the analysis of whether an effect was to be acknowledged might turn out to be unnecessary (points 7.3 and 7.4).
- VIII. After receiving the communication the appellant filed three further documents with letters of 21, 23 and 24 of July respectively, namely:
- D30: K. Yahagi, J. Soc. Cosmet. Chem, volume 43, 1992, pages 275-284
D31: US-A-2002/0077256
D32: WO-A-2004/105710
- IX. With letter dated 11 August 2015 the patent proprietor (respondent) filed a further set of claims as an auxiliary request and three further documents, namely:

D33: Ultrasil Q-Plus Quaternary Silicone, Noveon Technical Data Sheet, 2003

D34: Ultrasil CA-1 and Ultrasil CA-2, Noveon Technical Data Sheet, 2002

D35: Ultrasil A-21 and A-23, Noveon Technical Data Sheet, 2003

X. Oral proceedings were held on 22 September 2015.

XI. The arguments of the appellant, as far as relevant to the present decision, may be summarised as follows:

Admittance of evidence filed in appeal

- a) Document D30 was filed to show that the water soluble silicones disclosed in D2 and D3 were known as conditioning agents. Documents D32 and D33 were relevant to show that compositions including surfactants, water soluble silicones and cationic guar derivatives were known. On the basis of their relevance documents D30 to D32 should be admitted into the proceedings.

Main request - amendments

- b) A selection from several lists was necessary to come to the subject-matter of claim 19 including the selection of a cationic derivatised polygalactomannan, of a cassia split and of the specific aspect of co-processing a split of guar and cassia. In addition the disclosure on page 27, paragraph [0083] did not refer to cationic modified polygalactomannan, as clear also from figure 1. On that basis, the combination of features of claim 19 did not meet the requirements of Article 123(2) EPC.

Main request - sufficiency

- c) No examples were present in the patent in suit according to claim 1 of the main request which could show any effect of the claimed composition. In view of that and due to the breadth of the claim, the claimed invention could not be carried out by a person skilled in the art.

Main request - priority and novelty

- d) The priority document D23, which was a continuation-in-part of the US equivalent of international application D1 claiming priority from a previous European application, could not be considered as a first application according to Article 87 EPC. D1 disclosed the subject-matter of claim 1 including the specific water soluble silicones by means of the reference to documents D2 and D3. The sentence in D1 which referred to the silicones described in D2 and D3 and incorporated these documents by reference made it clear that all silicones disclosed therein were covered including those which were listed as nonionic surfactant. In this respect it was relevant to note that many compounds in cosmetic have a plurality of functions, but their presence was to be taken into account to judge the novelty of a product claim independently of whether the function was disclosed in the prior art document. Moreover, it was known to the person skilled in the art that the water soluble silicones in D2 and D3 were hair conditioning agents. This approach regarding citations in a prior art document was in line with the case law, in particular with

T 0153/85 (OJ EPO 1988, 1), while a different conclusion would go against the established case law. As D1 disclosed the subject-matter of claim 1, D23 could not be considered as the first application and the priority was not valid. Following the same arguments document D1 was detrimental to the novelty of claim 1.

Main request - inventive step

- e) If not novelty destroying, document D1 would be relevant to inventive step and could be combined with documents D2 and D3 to arrive at the claimed subject-matter. As an alternative, document D19 could be taken as the closest prior art. It disclosed shampoo compositions including surfactants and water soluble silicone conditioning agents in combination with cationic derivatised guar. As it was indicated that other polysaccharides could be used instead of guar ("guar gums, xanthan gums, ... and the like"), it would be obvious for the skilled person to use cassia, as described for instance in document D8, which disclosed the use of cassia as thickening and gelling agent in different technical fields. An alternative disclosure of cassia could be found in D15. The process features in claim 1 did not have any peculiarity which could result in an inventive activity. Moreover, an intellectual leap related to the use of cassia was missing. On that basis, the composition of claim 1 did not involve an inventive step.

XII. The arguments of the respondent, as far as relevant to the present decision, may be summarised as follows:

Admittance of evidence filed in appeal

- a) Documents D29 to D32 were less relevant than the documents already on file and should therefore not be admitted into the proceedings. This was all the more the case for documents D30 to D32, which were filed shortly before the oral proceedings. Documents D33 to D35 were instead filed in reaction to the communication of the Board with regard to the question whether example 21 in the patent fell under claim 1 of the main request and were therefore to be admitted into the proceedings.

Main request - amendments

- b) The passage on page 27, paragraph [0083], which was to be read in the context of the whole application, provided a clear basis for claim 19. It was clear from paragraph [0283] that cassia in the context of the patent was always derivatised with a cationic substituent; this included the cassia co-minced with guar for which results were shown in figure 1. Moreover, no multiple selections were needed to come to the subject-matter of claim 19.

Main request - sufficiency

- c) Breadth of the claim could not imply lack of sufficiency and in the absence of any evidence on the side of the respondent, who bore the burden of proof, there was no reason to call in question sufficiency of disclosure, all the more as the patent contained ample technical information and experimentation, the respondent had been able to

provide experimentation and the invention did not go against any prevailing opinion.

Main request - priority and novelty

- d) The content of the European patent application was identical to that of the priority document D23 and D23 was the first application for the subject-matter claimed, as there was no disclosure in D1 of the water soluble silicones present in the composition of claim 1. None of the silicones explicitly mentioned in D1 was water soluble and the reference to documents D2 and D3 in D1 was unequivocally in the context of hair conditioning agents, so that it could be understood by the skilled person only as relating to the part of the disclosure in D2 and D3 concerning silicone hair conditioning agents. This was confirmed by the fact that both D1 and that part of the disclosure of D2 and D3 were consistent in that they related to insoluble silicones. In this context it was relevant to note that a deviation from the single document approach in the assessment of novelty represented an exception from the general rule, which was to be applied narrowly according to the case law. Incorporating the whole of the disclosure of D2 and D3, including the silicones which were disclosed as nonionic surfactants therein, would go against the established case law. On that basis D1 did not anticipate the subject-matter of claim 1 and could neither be used to challenge the validity of the priority, nor to call in question the novelty of claim 1.

Main request - inventive step

e) Claim 1 was distinguished over the disclosure of document D19, taken as the closest prior art, in that wet-minced cationic cassia was used in the shampoo composition. An effect related to the use of cassia was proven by example 21. In any case, also if the problem was formulated as the provision of a further composition, there was no hint in the prior art to introduce wet-minced cationic cassia into the composition of D19. No document was indeed available to show that wet-minced cationic cassia would be used in shampoo compositions. Document D8 related to a process for producing flour from endosperm of cassia to be used as thickening agent in food industry or in textile printing and document D15 was not any better. In this respect the could/would approach well established in the case law was to be used, which implied that documents pertaining to a remote technical field would not be taken into account by the skilled person. On that basis alone, the presence of an inventive step should be acknowledged.

XIII. The appellant requested that the decision under appeal be set aside and the patent be revoked.

XIV. The respondent requested that the appeal be dismissed (main request) or, in the alternative, that the patent be maintained on the basis of the claims of the auxiliary request filed by letter of 11 August 2015.

Reasons for the Decision

Admittance of evidence filed in appeal

1. Document D29, whose admittance into the proceedings was contested by the respondent, was filed by the appellant with the statement setting out the grounds of appeal. The document was meant to show that compositions including water soluble silicones and cationic guar derivates were well known, so that the simple provision of alternative compositions with water soluble silicones could not be inventive. The document was therefore timely filed by the appellant in appeal and can be seen as a legitimate reaction to the decision, so that the Board sees no reason under Article 12(4) RPBA not to admit it.

2. On the other hand, documents D30 to D35 were all filed after oral proceedings had been arranged, in order to show that the water soluble silicones disclosed in D2 and D3 were known as conditioning agents (D30), that compositions including surfactants, water soluble silicones and cationic guar derivatives were known (D32 and D33) and that example 21 in the patent fell under claim 1 of the main request (D33 to D35). However, the relevance of these points was already clear throughout the appeal proceedings (with regard to example 21, see the argument of the appellant on lack of sufficiency that the patent did not contain any example according to claim 1 of the main request on page 2 of the statement of grounds with reference to specific sections of the notice of opposition), so that there was no justification for their filing at such a late stage. In view of that the Board finds it appropriate to exercise its discretion under Article 13 RPBA by not admitting documents D30 to D35 into the proceedings.

Main request - amendments

3. Claim 19 of the main request is a claim dependent on claim 1 which reads:

"19. The shampoo composition of claim 1 wherein a split of cassia and guar are co-processed".

- 3.1 Claim 1, whose compliance with the requirements of Article 123(2) EPC has not been questioned by the appellant, finds its basis in claims 1, 10, 13 and 24 of the original application. While, as far as the water soluble silicones are concerned, all the silicones listed in the dependent claims have been added to claim 1 (original claims 10 and 13), with regard to the split which is swollen, cassia has been selected out of the list in original claim 24 ("one split selected from tamarid, fenugreek, cassia, locust bean, tara or guar". As a single selection has been made, there is no doubt that the subject-matter of claim 1 has been directly and unambiguously disclosed in the application as filed.

- 3.2 The additional feature of claim 19 finds a literal basis on page 27, in the middle of paragraph [0083]. While this has not been contested, the appellant supported the view that multiple choices were necessary to come to the embodiment of claim 19 and that the specific disclosure on page 27 did not refer to cationic modified polygalactomannans, as clear also from figure 1, so that it could not be combined with the composition of original claim 1.

- 3.3 Neither of the arguments of the appellant is found convincing by the Board.

- 3.3.1 As to the multiple selections, while a single selection in the original disclosure is necessary for the subject-matter of claim 1 (point 3.1, above), no further independent selection is necessary to add the co-processing of cassia and guar, which relates to a sub-embodiment of the one in which cassia is swollen. Indeed, only in the context in which cassia has been selected, the skilled person may consider the further disclosed embodiment in which it is co-processed with guar.
- 3.3.2 As to the question whether the disclosure on page 27 can be combined with cationic modified polygalactomannans, the original application discloses polygalactomannans derivatized with a cationic substituent in claim 1 and by means of reference in all original claims, so that it is clear that this is the central embodiment of the original application. With specific reference to cassia, it is specified in paragraph [0283] that unless otherwise stated, a specific derivatized cationic cassia is intended to be used in the examples which follow. In this context, the disclosure on page 27, also as far as the reference to figure 1 is concerned (which is again mentioned in the context of example 5, paragraph [0297] and following), cannot be read as independent from the general disclosure of cationic derivatized polygalactomannans, independently of the fact that cationic derivatization is not explicitly mentioned in the disclosure itself.
- 3.4 On that basis it is concluded that the subject-matter of claim 19 is directly and unambiguously derivable from the application as originally filed, so that the requirements of Article 123(2) EPC are met.

Main request - sufficiency

4. The Board does not agree with the argument of the appellant that in the absence of any example which could show any effect of the claimed composition and in view of the breadth of the claim, the claimed invention could not be carried out by a person skilled in the art.
- 4.1 A lack of sufficiency cannot be implied by the presence of a broad claim alone, nor by the absence of experiments which support the achievement of an effect (if the effect is not present as a condition in the claim). On the contrary, an objection of lack of sufficiency presupposes that there are serious doubts, substantiated by verifiable facts.
- 4.2 In the present case, claim 1 refers indeed to a large class of silicones, which are defined by chemical formulae including several possible alternatives. The compounds as such are, however, not unknown (which has never been disputed by the appellant) and the fact that many silicones may be chosen does not imply any difficulty in making a composition including these components. In addition, claim 1 (as well as the claims dependent thereon) does not specify the achievement of an effect, but is simply directed to a composition defined by a list of ingredients. In the absence of evidence on the side of the appellant, the Board does not see any substantial reason which could put into doubt the sufficiency of disclosure.
- 4.3 In view of these reasons, the objection under Article 100(b) EPC must fail.

Main request - priority and novelty

5. The appellant contested the validity of the claimed priority on the argument that the priority document D23 could not be considered as the first application according to Article 87 EPC in view of document D1. While the presence of a large overlap between the disclosures of D23 and D1 was accepted by both parties, the point of dispute was whether document D1 disclosed the specific water soluble silicones, which are listed in claim 1 of the main request. It is therefore on this point that the Board is called to decide.

5.1 Document D1 discloses silicones at several instances (e.g. page 36, line 18; page 44, line 27 to page 54, line 6). However, nowhere are water-soluble silicones of the specific chemical formulae defined in claim 1 explicitly disclosed. In this respect it is relevant to note that neither the generic disclosure on page 36 (line 18) mentioning "water-soluble agents (for instance silicones)", nor the list of generic classes on page 45 (lines 26 to 28) reading "Suitable silicone oils include polyalkyl siloxanes, polyaryl siloxanes, polyalkylaryl siloxanes, polyether siloxane copolymers, and combinations thereof" can be seen as anticipating the specific classes of silicones defined by specific chemical formulae as present in claim 1.

5.2 The only question remaining is whether the reference to documents D2 and D3 in the sentence bridging pages 44 and 45 can be seen as an implicit disclosure of the water soluble silicones listed in claim 1. The crucial sentence reads as follows: "Non-limiting examples of suitable silicone hair conditioning agents, and optional suspending agents for the silicone, are described in U.S. Reissue Patent 34,584, U.S. Pat. No.

5,104,646, U.S. Pat. No. 5,106,609, which descriptions are incorporated herein by reference", wherein the second and third cited documents correspond to D2 and D3.

5.3 Document D2 contains a section relating to hair conditioning agents and disclosing in particular silicone agents (column 16, line 25 to column 19, line 7). Therein it is first stated that examples of hair conditioning materials suitable for the compositions disclosed therein are volatile liquid hydrocarbons and silicone agents (column 16, lines 25 to 27); then it is specified that these materials have a low solubility in water (less than about 01.%, column 16, line 28 to 30); and finally silicones are exemplified by means of chemical formulae and reference to market products (column 16, line 42 to column 19, line 7). In a different part of the document (column 7, line 41 to column 9, line 65) examples of preferred classes of nonionic surfactants are given (column 7, lines 41 and 42) including silicone copolyols which may be polyalkylene oxide modified dimethylpolysiloxanes of a given technical formula (column 9, lines 1 to 44). The disclosure of document D3 is completely analogous including a section on silicones as hair conditioning agents (column 16, line 13 to column 18, line 65) and one on preferred classes of nonionic surfactants including silicone copolyols (column 7, line 38 to column 9, line 36).

5.4 While it was not disputed by the parties that the silicone agents disclosed in D2 and D3 as hair conditioning agents do not fall under the silicones listed in claim 1 and that those disclosed as nonionic surfactants do fall under them, there was disagreement on which classes could be seen as included in the

disclosure of document D1 by means of the reference to D2 and D3.

- 5.5 The Board considers that the skilled person would find the sentence in D1 unequivocal and pointing to the silicones disclosed in D2 and D3 as hair conditioning agents. The fact that the sentence in D1 refers to "silicone hair conditioning agents" pointing to D2 and D3 and that D2 and D3 have a section relating to hair conditioning agents and addressing specific silicones does not leave any doubt about which part of D2 and D3 is incorporated by means of the reference. Independently of whether the skilled person would know or not that the silicones disclosed as nonionic surfactants could perform a hair conditioning function, he would not interpret the sentence in D1 as an invitation to scan the whole of the disclosure of D2 and D3 in order to find suitable silicone hair conditioning agents, but as a clear pointer to the part of the disclosure relating to silicones as hair conditioning agents.
- 5.6 The fact that in the analysis of novelty of a product claim the disclosure of a compound in a prior art document is relevant independently of the function attributed to it in the prior art disclosure, is not pertinent in this case. Here the water soluble silicones listed in claim 1 are not disclosed as such in document D1 and the reference to D2 and D3 makes it clear that silicones are referred to which are disclosed in those documents as accomplishing a specific function.
- 5.7 By virtue of the reference, therefore, only those silicones are incorporated in document D1 which are disclosed as hair conditioning agents in D2 and D3. As

these silicones do not fall under the water soluble silicones listed in claim 1 of the main request, document D1 does not anticipate the subject-matter of claim 1 of the main request and cannot serve to put into doubt the fact that document D23 is the first application in the sense of Article 87 EPC, with the consequence that the arguments of the appellant contesting the validity of the priority must fail.

- 5.8 This conclusion is not in disagreement with the case law cited by the appellant and in particular with T 0153/85 (*supra*).
- 5.8.1 In that decision the situation was analysed in which a first prior art document disclosed specific copolymers and made reference to their preparation by a condensation reaction, using the method described in a second prior art reference. In the decision it was stated that, when assessing novelty, the disclosure of a particular prior document must always be considered in isolation; in other words it is only the actual content of a document (as understood by a skilled person) which destroys novelty. However, in a case, where there is a specific reference in one prior document (the "primary document") to a second prior document, when construing the primary document (i.e. determining its meaning to the skilled person) the presence of such specific reference may necessitate that part or all of the disclosure of the second document be considered as part of the disclosure of the primary document (point 4.2 in the grounds, third paragraph).
- 5.9 This approach has been followed in the present case in which the construction of document D1 has been made by taking into account the specific reference to D2 and

D3, which, by virtue of its meaning to the person skilled in the art, implies the incorporation of a specific part of those documents. The fact that what was considered to be incorporated was not in agreement on what was the opinion of the appellant in this respect is not sufficient to justify a discrepancy in the case law.

- 5.10 By means of the same arguments detailed for the analysis of the validity of the priority, it is clear that document D1 cannot be novelty destroying for the subject-matter of claim 1, so that also the objection of the appellant of lack of novelty based on D1 fails.

Main request - inventive step

6. The appellant developed arguments for lack of inventive step starting either from document D1 or from document D19 as the closest prior art. By virtue of the failing of the arguments of the appellant against the validity of the priority, document D1, which was published after the priority date of the patent in suit, does not belong to the state of the art under Article 54(2) EPC and is therefore of no relevance in the analysis of inventive step. On that basis the only proper attack on which the Board has to decide is the one based on D19 as the closest prior art in conformity with what has been decided in the decision under appeal.

- 6.1 Both in the decision under appeal and in the arguments of the parties it is found that the subject-matter of claim 1 differs from the disclosure of document D19 in that wet-minced cationic cassia is used in the shampoo composition. Indeed, D19 in the context of suitable cationic or quaternized polysaccharides or polysaccharide derivatives for the shampoo and

conditioning compositions disclosed therein mentions "guar gums, xanthan gums, locust bean gums, gum arabic starches, starch amyloses, alginates, and the like" (column 5, lines 38 to 42). Cassia is clearly not disclosed, let alone cassia obtained by a specific production method.

- 6.2 The opposition division in the appealed decision defined the problem as the provision of a further shampoo composition comprising cationic galactomannan hydrocolloids, surfactants and water-soluble silicones, under the assumption that no effect was proven. As the use of wet-minced cationic cassia was considered a non obvious solution to that problem, it was considered unnecessary to evaluate whether the examples of the patent demonstrated an improvement which allowed the formulation of a different technical problem.
- 6.3 The Board finds it appropriate firstly to strictly review the first instance decision, i.e. to evaluate whether the conclusion of the opposition division that the use of wet-minced cassia is a non obvious solution to the problem of providing a further composition is correct.
- 6.4 The main argument of the appellant in this respect was that the use of the expression "and the like" in D19, together with the availability of cassia endosperm flour for multiple uses in D8, was enough to render the use of wet-minced cationic cassia an obvious alternative to the polagalactomannans disclosed in D19.
- 6.5 The Board does not concur with this argument.

- 6.5.1 The expression "and the like" is a generic one, which at most may render obvious alternatives which are known in the field.
- 6.5.2 Document D8 does not belong to the field of shampoo compositions and not even to the broader field of cosmetics, but is concerned with gelling and thickening agents in the area of food technology (column 1, first paragraph; column 3, last paragraph) and discloses the production of cassia endosperm flour and not of wet-minced cationic cassia.
- 6.5.3 Nothing more can be derived from document D15, which also does not belong to the same field of technology as the patent in suit and D19, but is concerned with polygalactomannans as thickening agents in the paper industry or in textile printing (column 1, lines 38 to 49). Also with respect to D15 a disclosure therein of wet-minced cationic cassia has not been provided by the appellant.
- 6.6 As wet-minced cationic cassia, if at all available, is not disclosed as a possible ingredient of shampoo compositions and not even of generic cosmetic compositions, but cassia is only mentioned in remote documents, which the skilled person would not consider to combine with the disclosure of D19, the Board can only conclude that the reasoning of the opposition division is correct and that the decision holds good.
- 6.7 No different conclusion can be reached in view of documents, such as D29, which disclose further shampoo compositions including water soluble silicones and cationic guar derivates, but do not mention cationic cassia. Moreover, in view of the conclusion reached above, there is no need to analyse whether an effect

has been shown in the patent in respect of the distinguishing feature.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Fabiani

J. Riolo

Decision electronically authenticated