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**Datasheet for the decision
of 6 October 2015**

Case Number: T 0403/12 - 3.3.07

Application Number: 05740596.1

Publication Number: 1755532

IPC: A61K8/00

Language of the proceedings: EN

Title of invention:
EPILATORY COMPOSITIONS

Applicant:
Reckitt Benckiser Healthcare (UK) Limited

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (no)



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0403/12 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 6 October 2015

Appellant: Reckitt Benckiser Healthcare (UK) Limited
(Applicant) 103-105 Bath Road
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Representative: Cawdell, Karen Teresa
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 6 October 2011
refusing European patent application No.
05740596.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division announced at the oral proceedings on 21 September 2011 refusing European patent application No. 05 740 596.1.

II. The decision was based on claims 1-9 filed with the letter dated 15 August 2011, whereby claim 1 read as follows:

"1. An epilatory composition of the adhesive type which comprises:

- a. from 50 to 90 percent by weight of a rosinous material or hydrocarbon resin;
- b. from 0.5 to 20 percent by weight of a hydroxy-group containing compound selected from water, glycerol, polyethylene glycol and mixtures thereof;
- c. an emulsifier and/or surfactant;
- d. a mixture of at least one natural wax and one synthetic wax; and
- e. an elastomeric polymer which is vinyl ethylene-acetate."

III. In the decision under appeal, the following documents were cited *inter alia*:

D1: EP-A-1 245 220

D5: FR-A-2 751 873

IV. As far as relevant to the present decision, the decision under appeal can be summarised as follows:

The composition of claim 1 differed from the disclosure of D1, taken as the closest prior art, in that a mixture of a natural and a synthetic wax was added and

in that ethyl vinyl acetate elastomer was present. The examples in the application compared compositions which differed in the absence of water and of the emulsifier and did not relate to the distinguishing features with respect to document D1. Therefore, it was impossible to establish the presence of a technical effect based on the available experimental data and the problem solved was the provision of alternative epilatory compositions. A hint to add waxes and the specific elastomer was to be found in D5 and D1 itself. On that basis the subject-matter of claim 1 lacked an inventive step. The same conclusion was reached for the other dependent and independent claims.

- V. The applicant (appellant) filed an appeal against that decision. With the statement setting out the grounds of appeal, the appellant requested oral proceedings before any adverse decision and submitted a single set of claims, in which claim 1 corresponded to claim 1 of the request on which the decision was based with the addition of the feature "wherein the hydroxyl-group containing compound comprises 50% or more by weight of water".

- VI. The appellant was summoned to oral proceedings with letter of 17 October 2014. With letter of 2 October 2015 the appellant withdrew the request for oral proceedings and requested a decision based on the state of the file to date.

- VII. Oral proceedings took place on 6 October 2015 in the absence of the appellant.

- VIII. The appellant's arguments, as far as relevant to the present decision, can be summarised as follows:

The differences between the composition of claim 1 of the single request and document D1 as closest prior art were the presence of a mixture of synthetic and natural waxes and the presence of an ethyl vinyl acetate polymer. The technical effect of these differences was the provision of a composition that heats up homogeneously and is therefore more efficient in removing hair from the user. The objective technical problem was thus the provision of a more efficient and safer epilatory composition. As document D1 made reference to waxes only as an alternative to a rosin resin and document D5 did not concern the use of a material to indicate that the product had been heated to a level that was too high for use by an individual, a combination of these documents would not lead the skilled person to the claimed composition, which was therefore inventive over the cited prior art.

- IX. The appellant requested in writing that the decision under appeal be set aside and a patent be granted on the basis of the single set of claims filed with the statement setting out the grounds of appeal.

Reasons for the Decision

Inventive step

1. Both the choice of the closest prior art (document D1) and the identification of the differences (the presence of a mixture of synthetic and natural waxes and the presence of an ethyl vinyl acetate polymer) in the decision under appeal are not disputed by the applicant. The Board agrees with this starting point and does not need to discuss it in any further detail.

- 1.1 The examining division formulated the technical problem as the provision of an alternative epilatory composition, since it was impossible to establish the presence of a technical effect based on the available experimental data.
- 1.2 The appellant claimed the presence of an effect (the provision of a composition that heats up homogeneously and is therefore more efficient in removing hair from the user) which should form the basis for the formulation of the technical problem (the provision of a more efficient and safer epilatory composition). However, the appellant did not provide any reason why the conclusion of the examining division that the available experimental data did not support any technical effect (because they compared compositions which differed in the absence of water and of the emulsifier and did not relate to the distinguishing features with respect to document D1) should be wrong, nor any additional experimental data.
- 1.3 In the present situation the Board can only confirm the finding of the examining division that there are no data on file which support the presence of a technical effect over the closest prior art D1 in view of the acknowledged distinguishing features. Under such circumstances, the problem solved is simply the provision of a further epilatory composition.
- 1.4 The skilled person, looking for further compositions, would consider the inclusion in the composition of any ingredient known in the field as suitable to be used therein, such as synthetic and natural waxes and an ethyl vinyl acetate polymer, as known from document D5 (page 3, line 29 to page 4, line 10; page 4, lines 20 to 26 and page 5, lines 20 to 22), without exercising

any inventive activity. As the problem is simply the provision of a further composition, no further motivation is needed by the skilled person to include such ingredients.

1.5 In summary, the Board concludes that none of the reasons provided by the appellant in appeal proceedings can call in question the validity of the decision of the examining division with respect to inventive step, with the consequence that claim 1 of the single request on file does not involve an inventive step (Article 56 EPC).

2. As the appeal is to be dismissed already in view of lack of inventive step of the single request on file, there is no reason for the Board to decide on any other issue.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Fabiani

J. Riolo

Decision electronically authenticated