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Datasheet for the decision of 9 April 2014

Case Number: T 0737/12 - 3.3.06

Application Number: 06743905.9

Publication Number: 1899449

IPC: C11D3/00, C11D1/83, C11D3/02, C11D3/20

Language of the proceedings: EN

Title of invention:
Acidic hard surface cleaning compositions

Patent Proprietor:
Reckitt Benckiser Inc.

Opponent:
The Procter & Gamble Company

Headword:
Cleaning metallic surfaces / RECKITT BENCKISER

Relevant legal provisions:
EPC Art. 52(1), 56, 114(2), 123(2)
RPBA Art. 12(2), 12(4), 13(3)

Keyword:
Admissibility (all claim requests and newly filed experimental reports) : yes
Inventive step (main request and auxiliary request 4) : no
Added subject-matter (auxiliary requests 1, 2 and 3) : yes

Decisions cited:

Catchword:

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Case Number: T 0737/12 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 9 April 2014

Appellant: (Opponent)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnatti, Ohio 45202 (US)
Representative:	Clarke, Lionel Paul Gill Jennings & Every LLP The Broadgate Tower 20 Primrose Street London EC2A 2ES (GB)
Respondent: (Patent Proprietor)	Reckitt Benckiser Inc. Morris Corporate Center IV 399 Interpace Parkway Parsippany, New Jersey 07054 (US)
Representative:	Gill Carey, Michael Reckitt Benckiser Corporate Services Limited Legal Department - Patents Group Dansom Lane GB-Hull HU8 7DS (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 25 January 2012 rejecting the opposition filed against European patent No. 1899449 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman: B. Czech
Members: L. Li Voti
T. Bokor

Summary of Facts and Submissions

I. The present appeal by the Opponent is from the decision of the Opposition Division to reject the opposition against European patent no. 1 899 449.

II. Claim 1 of the patent as granted reads as follows:

"1. *A method of treating a metal or metallic surface comprising applying an effective amount of a composition which provides a cleaning and optionally a disinfecting benefit comprising:*
an acidic constituent;
at least one anionic surfactant constituent;
at least one nonionic surfactant constituent;
at least one organic solvent constituent;
at least one inorganic chloride salt;
optionally one or more further constituents selected from coloring agents, fragrance and fragrance solubilizers, viscosity modifying agents, pH adjusting agents and pH buffers including organic and inorganic salts, optical brighteners, opacifying agents, hydrotropes, antifoaming agents, enzymes, anti-spotting agents, anti-oxidants, preservatives, and anti-corrosion agents;
and the balance, water;
wherein the amount of acidic constituent present is such that the pH of the composition is less than 6."

III. In its notice of opposition the Opponent had sought the revocation of the patent on the grounds of Articles 100(a) and (c) EPC 1973.

The raised objections were based *inter alia* on the disclosures of document
D1: WO 01/77278 A1.

IV. The Opposition Division found in its decision, in particular, that the granted claims complied with the requirements of Article 123(2) EPC and that the claimed subject-matter was novel and inventive over the cited prior art.

V. The Appellant filed with its statement of grounds of appeal three experimental reports as annexes 1 to 3. It submitted *inter alia* that the subject-matter of granted claim 1 lacked novelty over the disclosure of document D1, and also lacked inventive step, *inter alia* in the light of document D1.

VI. The Respondent (Patent Proprietor) filed with its reply to the statement of the grounds of appeal of 18 September 2012 four amended sets of claims to be considered as main request and auxiliary requests 1 to 3, respectively, and rebutted all the Appellant's arguments.

Claim 1 according to said main request differs from claim 1 as granted in that it was amended to read (features added to claim 1 as granted highlighted by the Board):

"*1. ... at least one inorganic chloride salt* ***in an amount of from about 0.2 to about 3.0 percent weight;*** *...*"

Claim 1 according to auxiliary request 1 differs from claim 1 according to the main request in that it was amended to read:

"*1. ... at least one inorganic chloride salt in an amount of from* ***about 1.5*** *to about 3.0 percent weight; ...*" (emphasis added).

Claim 1 according to auxiliary request 2 differs from claim 1 according to auxiliary request 1 insofar as it more specifically relates to

"*1. A method of treating a metal or metallic surface* ***comprising copper*** *..."* (emphasis added).

Claim 1 according to auxiliary request 3 differs from claim 1 according to auxiliary request 2 only insofar as it more specifically relates to

"*1. A method of treating a metal or metallic surface comprising copper comprising applying an effective amount of a* ***pourable*** *composition ..."* (emphasis added).

VII. In its written response, the Appellant raised objections under Article 84 EPC (lack of clarity) and Article 123(2) EPC against the respective claims 1 according to all the pending requests, and maintained that the claimed subject-matter was not inventive.

VIII. During the oral proceedings held before the Board on 9 April 2014, the debate focused *inter alia* on the issue of inventive step with regard to the main request. Subsequently, the issue of whether the amended wording "*about 1.5 to about 3.0 percent weight*", contained in the independent claims of auxiliary requests 1 to 3, complied with the requirements of Article 123(2) EPC was extensively addressed. Thereupon, the Respondent filed a new set of amended claims as auxiliary request 4, and the Appellant did not object to the late filing thereof. Regarding this request, the debate then focused *inter alia* on the issue of inventive step in the light of document D1.

Claim 1 of the set of claims according to said newly

filed auxiliary request 4 filed at the oral proceedings differs from claim 1 according to the main request insofar as it relates more specifically to (changes made apparent by the Board):

"1. A method of treating a metal or metallic surface ***comprising copper*** *... comprising ...*
at least one inorganic chloride salt in an amount ~~of~~ from ~~about~~ 0.2 to ~~about~~ 3.0 percent ***by*** *weight*".

IX. The Appellant requested that the decision under appeal be set aside and that the European patent be revoked.

The Respondent requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims according to any of the main request, auxiliary request 1, auxiliary request 2 or auxiliary request 3, all filed with letter dated 18 September 2012, or according to auxiliary request 4 (claims 1 to 16) filed at the oral proceedings before the Board.

X. The arguments of the parties of relevance here can be summarised as follows:

The **Appellant** submitted that

- the concentration range "*about 1.5 to about 3.0 percent weight*" for the "*at least one inorganic chloride salt*" as defined in the independent claims 1 according to the Respondent's auxiliary requests 1, 2 and 3 was not supported by the application as originally filed; therefore, these claims contravened the requirements of Article 123(2) EPC;

- as regards inventive step of the subject-matter of claim 1 according to Respondent's auxiliary request 4 (or according to its main request), the method of treating a metal or metallic surface comprising copper by applying an effective amount of the composition disclosed on page 7 of document D1 represented the closest prior art; this document concerned inter alia the treatment of household metal surfaces having a shiny finish, which thus included copper containing surfaces, for removing grease or oily soil and providing disinfection, and the composition disclosed on page 7 differed from that used in claim 1 at issue only insofar as it required a broader concentration range for the inorganic chloride salt and did not contain necessarily an organic solvent constituent;

- no comparison had been provided between the claimed subject-matter and the use of a composition as disclosed on page 7 of document D1; moreover, even though table 1 of the patent in suit showed that compositions of the claimed invention containing inorganic chloride salts were more effective than a similar composition containing an inorganic sulfate salt in the removal of a surface oxides layer from a tarnished copper containing metal surface, this specific effect had not been made credible throughout the whole range of inorganic chloride salts encompassed by the composition used according to the claimed method;

- furthermore, the method of metal treatment of the claims at issue was not limited to the removal of surface oxides from a tarnished metal surface and encompassed the cleaning of such metal surfaces from other soils, as disclosed already in document D1; therefore, the technical problem underlying the claimed

invention could only be seen in the provision of another method for treating metal surfaces in order to provide a cleaning and, optionally, a disinfecting benefit, which method was applicable to copper containing metal surfaces;

- document D1 disclosed that a composition as outlined on page 7, containing magnesium chloride, was suitable for cleaning and disinfecting household metallic surfaces; hence, it would have been obvious for the skilled person to try such a composition also in the cleaning of metallic surfaces containing copper, such as for example kettles or bathroom fittings; moreover, the preferred amounts of magnesium chloride disclosed in document D1 corresponded to those to be used according to the patent in suit;

- as acknowledged by the Respondent, the presence of an organic solvent was not considered to be essential for the realization of the technical goal of the patent in suit; moreover, document D1 (pages 13 and 14) already suggested the use of the same organic solvents used according to the patent in suit as water-mixable co-surfactants of the composition disclosed on page 7;

- therefore, it was obvious for the skilled person, in the light of the teaching of document D1, to try a composition having all the features of claim 1 at issue in a method for cleaning metal surfaces containing copper.

The **Respondent** submitted during oral proceedings that

- the concentration range "*about 1.5 to about 3.0 percent weight*" for the "*at least one inorganic chloride salt*" contained in the independent claims 1

according to the auxiliary requests 1, 2 and 3 was supported by the originally filed application documents, reference was made in particular to page 11, lines 13 to 16 and the examples in Table 1 of WO 2006/131690 A1; therefore, these claims complied with the requirements of Article 123(2) EPC;

- as regards inventive step, Table 1 of the patent in suit showed the advantage obtained by using a composition according to claim 1 at issue in the treatment of copper containing metal surfaces, since surface oxides were removed without the necessity of any mechanical action, simply by immersing copper containing metal coins into the cleaning liquid; such an advantage was not expectable in the light of the teaching of the prior art;

- therefore, even starting from the composition disclosed on page 7 of document D1, it would not have been obvious for the skilled person to use this composition for the treatment of copper containing metal surfaces with the expectation of obtaining the advantageous results shown in Table 1 of the patent in suit;

- the claimed subject-matter thus involved an inventive step.

Reasons for the Decision

1. Procedural issues

1.1 Admissibility of Respondent’s claim requests and of the newly filed Appellant's experimental reports

1.1.1 The Respondent's main request and auxiliary requests 1 to 3 were submitted in reply to the statement of grounds of appeal according to which the claimed subject-matter lacked novelty and inventive step.

1.1.2 The Board finds that the amendments made to the wording of claim 1 as granted were straightforward, contribute to the convergence of the issues to be debated and did not raise complex issues. The late filing of these requests was not objected to by the Appellant.

1.1.3 The three new Appellant's experimental reports were submitted in reply to the reasoning of the decision under appeal and were supposed to corroborate the Appellant's position regarding inventive step. The late filing of these experimental reports was not objected to by the Respondent.

1.1.4 Therefore, the Board decided to admit these requests as well as the experimental reports into the proceedings despite their late filing (Articles 114(2) EPC and 12(2),(4) RPBA).

1.2 Admissibility of Respondent's auxiliary request 4

1.2.1 The amended set of claims according to auxiliary request 4 was filed in reaction to an objection under Article 123(2) EPC raised for the first time at oral proceedings against the respective claims 1 according

to the pending auxiliary requests 1 to 3.

1.2.2 The Board finds that also in this case the amendments made to the wording of claim 1 as granted were straightforward, contributed to the convergence of the debate and did not raise complex issues. The Appellant did not object to the late filing of this request.

1.2.3 Therefore, the Board decided to admit also this request into the proceedings despite its late filing (Articles 114(2) EPC and 12(4) and 13(3) RPBA).

2. Since none of the Respondent's requests was found to be allowable, they need not to be addressed in their hierarchical order. In the following, they are dealt with in a deviating order purely for the sake of conciseness.

Moreover, since the main request and auxiliary request 4 are not allowable on the ground of lack of inventive step (*infra*), the further objections raised against these requests by the Appellant need not to be dealt with.

3. Auxiliary request 4 - Claim 1 - Inventive step

3.1 The invention concerns a method of treating a metal or metallic surface comprising copper by applying an effective amount of an aqueous acidic composition comprising surfactants and an inorganic chloride salt, and providing a cleaning and optionally a disinfecting benefit.

3.2 At the oral proceedings, it was common ground between the parties that document D1, and in particular a method of cleaning a metal surface by treating it with

an aqueous, acidic composition comprising surfactants as disclosed on page 7 of this document, was the closest prior art for the assessment of inventive step. Considering the similarities between this disclosure and the subject-matter of claim 1 at issue, as well as of the goals/problems addressed in both D1 and the patent in suit, the Board has no reason to take a different stance.

3.2.1 Indeed, document D1 (see page 1, lines 4 to 8; page 6, lines 16 to 20; page 8, lines 9 to 11) concerns the use of acidic compositions possessing detergency, good scouring power and greasy soil removal properties, as well as antibacterial disinfecting properties for cleaning hard surfaces, inter alia "metal surfaces having a shiny finish".

3.2.2 More particularly, the composition disclosed on page 7 (lines 3 to 21) of document D1 is a liquid crystal detergent **aqueous** composition having a pH of 2.7 to 3.8 (see page 6, lines 16 to 17), i.e. **below 6** as required by claim 1 at issue, comprising *inter alia* (relative amounts by weight):
i) 1% to 30% of a magnesium salt of a C8-C16 linear alkyl benzene sulfonate surfactant (i.e. **an anionic surfactant constituent** according to claim 1 at issue);
ii) 0.1% to 5% of a magnesium salt such as magnesium oxide, magnesium sulfate heptahydrate or magnesium **chloride** (the latter being **an inorganic chloride salt** according to claim 1 at issue);
iii) 0.1% to 10% of a perfume, essential oil, or water insoluble hydrocarbon having 6 to 18 carbon atoms and mixtures thereof;
iv) 1% to 20% of at least one ethoxylated nonionic surfactant (i.e. **a nonionic surfactant constituent** according to claim 1 at issue); and

v) 0.1% to 2% of a hydroxy containing organic acid selecting from the group consisting of lactic acid, citric acid or the hydroxy benzoic acid and mixtures thereof (i.e. **an acidic constituent** according to claim 1 at issue).

3.3 As regards the technical problem to be solved by the claimed invention in the light of D1, the Respondent submitted that it consisted in the provision of an improved method for the cleaning of metallic surfaces containing copper.

3.4 As the solution to this technical problem the patent in suit proposes the "*method of treating a metal or metallic surface comprising copper*" according to claim 1 at issue, which comprises "*applying an effective amount of a composition which provides a cleaning and optionally a disinfecting benefit*", this method being characterised in particular in that said composition must comprise

"an acidic constituent;
at least one anionic surfactant constituent;
at least one nonionic surfactant constituent;
at least one organic solvent constituent;
at least one inorganic chloride salt in an amount from 0.2 to 3.0 percent by weight;
optionally one or more further constituents selected from coloring agents, fragrance and fragrance solubilizers, viscosity modifying agents, pH adjusting agents and pH buffers including organic and inorganic salts, optical brighteners, opacifying agents, hydrotropes, antifoaming agents, enzymes, anti-spotting agents, anti-oxidants, preservatives, and anti-corrosion agents;
and the balance, water;

wherein the amount of acidic constituent present is such that the pH of the composition is less than 6."

3.5 Having regard to the alleged success of the claimed solution, the Respondent submitted in particular that the experimental results reported in Table 1 of the patent in suit (paragraphs [0035] to [0039]) and in particular the comparison of examples E1, E2, E3 and E4 (compositions containing an inorganic chloride salt), versus example C1 (composition containing an inorganic sulfate salt), and example C2 (composition not containing any inorganic salt) convincingly showed the advantages of using a composition according to claim 1 at issue in the treatment of tarnished copper containing metal surfaces. In particular, surface oxides were removed without the necessity of any mechanical action, simply by immersing copper containing metal coins into the cleaning liquid.

3.5.1 The Board accepts that those experimental results reported in the patent in suit which actually relate to the treatment of metal surfaces containing copper (i.e. those of Table 1) show that compositions according to claim 1 at issue containing an inorganic chloride salt in an amount within the claimed range are more effective than similar compositions containing an inorganic sulfate salt or no inorganic salt at all in the removal of a surface oxides layer from a tarnished copper containing metal surface. Indeed, Table 1 shows that a higher degree of cleaning (score of at least 1.5) was achieved more rapidly (score of at least 0.5 already after 30 seconds) when treating soiled, weathered U.S. pennies by simple immersion in compositions according to claim 1 at issue (examples E1 to E4). These experimental results reported in Table 1

were also not, as such, called into question by the Appellant.

3.5.2 However, the Board remarks that the method of claim 1 at issue is not limited to the removal of surface oxides from a tarnished metal surface comprising copper and, hence, encompasses also the cleaning of untarnished surfaces, i.e. the mere removal of other types of soil (e.g. dirt, grease, oil) from said surfaces.

Moreover, as pointed out by the Appellant, the comparative examples of said Table 1 do no not compare the claimed subject-matter with the closest prior art, i.e. the use of a composition as disclosed on page 7 of document D1, containing an inorganic chloride salt, i.e magnesium chloride, in an amount within the range of from 0.1 to 5 % stipulated by D1.

3.5.3 Likewise, the three experimental reports submitted by the Appellant compare the cleaning performance of compositions comprising either sodium or zinc chloride to the performance of compositions differing from the former in that they do not, unlike the composition according to the closest prior art, contain an inorganic salt, let alone an inorganic chloride salt. Moreover, although the first two reports relate to the cleaning of tarnished copper and brass surfaces, respectively, they describe the use of compositions comprising less inorganic chloride (i.e. 0.01%) than required by claim 1 at issue; the third report does not concern instead the cleaning of copper surfaces but the cleaning of ceramic tiles from greasy soap scum.

These comparative test results are thus not more

relevant than the results reported in the patent in suit.

3.5.4 Thus, for the Board, none of the comparative experimental evidence on file convincingly demonstrates an improvement over the method of D1 in terms of the cleaning performance achievable in the treatment of metallic surfaces comprising copper across the full ambit of claim 1, i.e. irrespective of the type of soil (dirt, grease, etc.) actually to be removed from said surfaces.

3.6 Consequently, the technical problem must be re-formulated in less ambitious terms. In the light of the closest prior art, i.e. the method disclosed in document D1 (see points 3.2.1 and 3.2.2 above), it can be seen in the provision of a further method for treating metallic surfaces in order to provide a cleaning thereof and, optionally, a disinfecting benefit, which method must be suitable for being applied to the treatment of copper-containing metallic surfaces.

3.7 Considering the chemical composition of the cleaning product to be used according to claim 1, the Board has no reason to doubt that the method of claim 1 at issue effectively solves this less ambitious technical problem. Nor was this called into question by the Appellant.

3.8 Hence, it remains to be decided whether the claimed solution was obvious in view of the state of the art.

3.8.1 As already mentioned under point 3.2.1 *supra*, document D1 (see also page 2, lines 4 to 8; page 6, lines 16 to 20 and page 8, lines 9 to 11) teaches explicitly that

the liquid detergent compositions disclosed therein provide cleaning and disinfecting benefits to the treated surfaces, which can be metallic surfaces.

3.8.2 Moreover, the composition disclosed on page 7 of D1 differs from that used according to claim 1 at issue only insofar as it does not expressly contain an organic solvent constituent (assuming for the sake of argument that water insoluble hydrocarbons having 6 to 18 carbon atoms are not to be considered as "*solvents*" within the meaning of claim 1) and it does not necessarily contain the inorganic magnesium chloride salt in a concentration falling within the range according to claim 1 at issue (only the broader range of from 0.1 to 5% by weight being indicated on page 7 of D1).

3.8.3 However, D1 teaches expressly (page 15, lines 17 to 19) to use magnesium chloride more preferably in concentrations of from 0.25 to 3% by weight, which fall within the range of "*from 0.2 to 3% by weight*" specified in claim 1 at issue for the "*at least one inorganic chloride salt*".

3.8.4 Furthermore, document D1 (page 7, line 6, in combination with page 13, lines 19 to 21 and 24) teaches also to use as "water mixable-cosurfactant", for example, "glycerol, ethylene glycol... mono C_1-C_6 alkyl ethers... of ethylene glycol and propylene glycol", i.e. an "*organic solvent constituent*" within the broadest meaning of claim 1 at issue.

3.8.5 As concerns the specific application of such a composition to the cleaning of metallic surfaces containing copper, it was not disputed that some articles occurring in households, such as kettles or

bathroom fittings, contained copper and had "hard surfaces ... having a shiny finish" within the meaning of D1 (page 6, lines 19/20). Hence, the Board has no doubts that the skilled person, considering the whole disclosure of document D1, would understand that the disclosed compositions are *inter alia* suitable for cleaning and disinfecting metallic surfaces comprising copper.

3.8.6 Therefore, the Board concludes that putting into practice the teaching of D1 by providing a method for cleaning (and disinfecting) copper-containing metallic surfaces by applying thereto a composition as defined on page 7 of D1, comprising magnesium chloride in a concentration falling within the range of claim 1 at issue and also comprising an organic solvent as the "water-mixable cosurfactant" component, was one of several possibilities readily available to the skilled person starting out from the more general teaching of D1 and seeking to solve the technical problem posed (point 3.6 *supra*). The skilled person would thus arrive at a method with all the features of claim 1 at issue, merely by following the teaching of document D1, i.e. without inventive ingenuity.

3.8.7 Therefore, in the Board's judgement, claim 1 is directed at subject-matter which does not involve an inventive step (Articles 52(1) and 56 EPC).

3.9 The auxiliary request 4 thus is not allowable.

4. Main request - Claim 1 - Inventive step

4.1 Since the wording of claim 1 according to Respondent's main request relates to the treating of a generic metallic surface, which is not even required to

comprise copper, it is broader in scope than claim 1 according to auxiliary request 4. The arguments exposed with respect to claim 1 of the more limited auxiliary request 4 thus apply even more so to the broader claim 1 according to the main request.

4.2 Since the subject-matter of claim 1 also encompasses obvious subject-matter, it does not comply with the requirement of inventive step (Articles 52(1) and 56 EPC).

4.3 The Respondent's main request is thus not allowable either.

5. Auxiliary requests 1 to 3

5.1 The respective claims 1 according to each of Respondent's auxiliary requests 1 to 3 require the "*at least one inorganic chloride salt*" to be present "*in an amount **from about 1.5 to about 3.0** percent weight*" (emphasis added).

5.2 In the Respondent's view such a concentration range is supported by the passage contained on page 11, lines 13 to 16 and by the examples of the application as filed (see WO 2006/131690 A1). Said passage of the description reads as follows (emphasis added): "***Preferably** the inorganic chloride salt(s) are present in amounts of from 0.00001 **to about 3%** by weight, desirably in amounts of 0.001 to about 2.5% by weight, yet more desirably from about 0.01 to about 1.5% by weight and **most desirably** from about 0.2 **to about 1.5%** weight.*"

5.3 The Board however remarks that, on the one hand, the concentration range of claim 1 at issue is not

disclosed as such in the quoted passage of the description, but appears to stem from a combination of the numerical value of the most desirable upper limit of "*about 1.5%*" as the lower limit of the new range with the value of the most generic preferred upper limit of "*about 3%*" as the upper limit of the new range.

The passage of the description quoted above thus does not contain any direct and unambiguous disclosure that a concentration range of "*from about 1.5 to about 3.0 percent weight*" would be appropriate, let alone preferable in case one or more of the inorganic chloride salts encompassed by the wording of claim 1 at issue were to be used.

5.4 On the other hand, the original description teaches in the immediately following paragraph (page 11, lines 16 to 18, in WO 2006/131690 A1) that "*Particularly preferred inorganic chloride salt(s) and weight percentages thereof are described with reference to one or more of the Examples.*"

5.4.1 Table 1 of the application as filed describes "*certain preferred embodiments of the inventive compositions*" which were tested for their "*ability ... to clean soiled copper metal surfaces*" (see page 14, lines 19 to 21 and page 16, lines 10 to 11, of WO 2006/131690 A1). The "*inventive compositions*" of examples E1, E2 and E4 contain only **1%** of sodium chloride, calcium chloride or zinc chloride, respectively, whilst example E3 according to the invention contains **2.14%** of magnesium chloride ($6H_2O$).

5.4.2 Therefore, three of the four preferred compositions listed in Table 1 contain an inorganic chloride salt in

an amount outside of the claimed range of from about 1.5% to about 3% by weight. Only composition E3 comprises the chloride salt (of magnesium) in an amount within the claimed range.

5.5 Hence, in the Board's judgement, even considering the disclosure of the description (the passages mentioned under points 5.2 and 5.4 *supra*) in combination with the examples, the application as filed does not directly and unambiguously disclose the group of compositions containing at least one inorganic chloride salt in an amount within the **newly defined concentration range** prescribed by the respective claims 1 at issue **irrespective of the nature of the cationic component** of the salt.

5.6 Consequently, by virtue of the amendments made, the respective claims 1 at issue are all directed to subject-matter which is not disclosed in, and hence extends beyond, the content of the application as filed.

5.6.1 Therefore, none of the respective claims 1 according to auxiliary requests 1 to 3 complies with the requirements of Article 123(2) EPC.

5.7 These requests are thus not allowable either.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

D. Magliano B. Czech

Decision electronically authenticated