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Case Number: T 1066/12 - 3.3.06

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Language of the proceedings: EN

Title of invention:
SHADING DYE GRANULE ITS USE IN A DETERGENT FORMULATION AND PROCESS TO MAKE IT

Patent Proprietors:
Unilever PLC
Unilever N.V.

Opponents:
Henkel AG & Co. KGaA
The Procter & Gamble Company

Headword:
Shading dye granule / UNILEVER

Relevant legal provisions:
EPC Art. 52(1), 56, 100(b)

Keyword:
Sufficiency of disclosure - yes
Inventive step - yes

Decisions cited:

Catchword:

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Case Number: T 1066/12 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 12 May 2015

Appellant: (Opponent 2)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
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Party as of right: (Opponent 1)	Henkel AG & Co. KGaA Henkelstrasse 67 40589 Düsseldorf (DE)
Representative:	Henkel AG & Co. KGaA FJI Patente 40191 Düsseldorf (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 7 March 2012 rejecting the opposition filed against European**

patent No. 1987122 pursuant to Article 101(2) EPC.

Composition of the Board:

Chairman	B. Czech
Members:	P. Ammendola
	C. Vallet

Summary of Facts and Submissions

I. This appeal is against the decision of the Opposition Division rejecting the opposition to European patent No. 1 987 122. The patent (date of filing: 2 February 2007) claims priority from European patent application no. 06251020.1 (filing date: 25 February 2006; hereinafter "priority document").

II. Claim 1 of the patent as granted read:

"*1. A granule for use as an additive in a laundry powder composition, the granule having a particle size distribution such that 90 wt% of the particles are less than 250 microns, in diameter, the granule comprising: 0.05 to 0.5 wt% shading dye solids absorbed into at least 80 wt% hydratable salt wherein the hydratable salt comprises light soda ash and wherein shading dye is one or more water-soluble photostable dyes, substantive to cotton, and having a peak absorption wavelength on cotton of from 540 nm to 650 nm, preferably from 570 to 630 nm.*"

Claim 2 defines a preferred embodiment of the granule according to claim 1.

Claim 3 defines a "*detergent powder composition*" comprising the granule according to claim 1.

Claim 4 defines a "*process to manufacture a shading dye granule according to any on of claims 1 or 2*".

III. Opponents 1 and 2 had sought revocation of the patent in suit, *inter alia*, on the grounds of insufficiency of the disclosure (Article 100(b) EPC), lack of novelty

and lack of inventive step (Article 100(a) EPC). During the opposition proceedings reference had been made, *inter alia*, to the documents:

D1 = WO 2005/003274 A1,

D2 = WO 2007/006357 A1 (publication date: 18 January 2007),

D3 = EP 1 627 909 A1,

D5 = US 6,696,400 B2, and

D8 = "*The Manufacture of Modern Detergent Powders*", W. Herman de Groot et al., 1995, pages 30 and 31.

Two further documents labelled D9 and D10 had been filed by Opponent 2 at a late stage of the opposition proceedings.

IV. The Opposition Division decided not to admit D9 into the proceedings but to admit D10, and came, *inter alia*, to the following conclusions:

- The patent was not objectionable under Article 100(b) EPC.

- The patent in suit was entitled to the indicated priority date. Hence, D2 was not prior art under Article 54(2) EPC and was not to be considered in the assessment of inventive step.

- Document D1 was to be seen as the closest prior art, since it disclosed granules for use as an additive in laundry powder compositions comprising added dye, and

dealt with the same problem as the patent in suit, namely avoiding spotting and dye damage on clothes. D5 was not an appropriate starting point. The skilled person searching for an alternative to the granule of D1 would not be incited by the available prior art documents to modify the granule of D1 in way leading to the granule according to claim 1 at issue. The claimed subject-matter involved an inventive step irrespective of whether D1, D3 or D5 was taken as the closest prior art.

V. Only Opponent 2 (hereinafter **Appellant**) appealed this decision. In its statement of grounds of appeal it disputed the findings of the Opposition Division concerning entitlement to priority, sufficiency of disclosure and inventive step. It also requested that document D9 be admitted into the proceedings.

VI. The Patent Proprietors (hereinafter **Respondent**) replied in writing, rebutting all the Appellant's objections. It also requested that late filed document D10 be admitted into the proceedings.

VII. The parties were summoned to oral proceedings.

VIII. Opponent 1 (party as of right) did not provide any written request or submission as to the substance of the present appeal case, and announced by letter of 10 March 2015 that it would not attend the oral proceedings.

IX. At the oral proceedings held on 12 May 2015, the debate focused, initially, on the issue of sufficiency of disclosure in respect of the feature "*light soda ash*". In view of the indications given in this respect by the Board, both parties agreed that there was no need for

reviewing the discretionary decisions of the Opposition Division to admit D9 and not to admit D10 into the proceedings, or for addressing the contents of these documents. Thereafter the parties were heard regarding the issue of inventive step and, in this connection, regarding the entitlement of the patent to the claimed priority date.

X. The **Appellant** requested that the decision of the Opposition Division be set aside and the patent be revoked.

The **Respondent** requested that the appeal be dismissed.

XI. The submissions of the **Appellant** of relevance here can be summarized as follows.

Insufficiency of the disclosure

The patented subject-matter was insufficiently disclosed due to the requirement that the soda ash component of the claimed granule had to be "***light*** *soda ash*" (emphasis added). This feature was ambiguous since there was no generally accepted definition of the density range of "*light*" soda ashes. For instance, different documents indicated a different upper limit value for the density of such products. What was called light soda ash by one manufacturer could be called, for instance, "medium" soda ash by another manufacturer. At the oral proceedings the Appellant however conceded that, as apparent e.g. from D5 (disclosing at column 2, lines 37 to 44, "light" soda ashes with a density as low as 500 Kg/m^3) or D8 (disclosing in Table 15, on page 31 a "light" soda ash with a density of 480 Kg/m^3) soda ashes with relatively low densities at around 500 Kg/m^3 were always designated as "light".

Lack of entitlement to priority

The Appellant argued that the subject-matter of claim 1 at issue was not entitled to the claimed priority date. The features of claim 1 requiring that the "*shading dye*" present in the granule had to be "*one or more water-soluble, photo-stable dyes substantive to cotton*", and had to have "*peak absorption wavelength on cotton of from 540 nm to 650 nm, preferably from 570 to 630 nm*", were only disclosed in the application as filed (page 4, lines 4 to 6), but not in the priority document. The reference to these features on page 1 of the priority document (paragraph starting at line 20) related exclusively to the shading dyes used according to the disclosure of the earlier prior art document D1 mentioned there. In particular, the phrase "Such a dye or combination of dyes may be referred to as a shading dye" (page 1, lines 29 to 30, of the priority document) only expressed that the dyes used according to D1 could be referred to as "shading dyes". It did not, however, provide a definition generally applicable to the expression "shading dye" as used throughout the entire priority document. The quoted phrase was thus not concerning the shading dye comprised in the granule according to the invention as disclosed in the priority document. This was also confirmed by the fact that the Respondent, upon filing the application for the patent in suit, had apparently considered necessary to include an additional paragraph (see page 4, lines 4 to 6) expressly setting out this definition of "*shading dye*" in the context of "*this specification*". Hence, claim 1 of the patent in suit did not enjoy the priority date claimed. Therefore D2 was prior art under Article 54(2) EPC, of relevance as regards the issue of inventive step.

Lack of inventive step

The Appellant considered that either of the two documents D1 and D5 represented a suitable starting point for the assessment of inventive step.

As held by the Opposition Division, Dl dealt with the same problem as the opposed patent, namely avoiding spotting and dye damage on clothes when using particulate detergent products comprising photostable dyes substantive to cotton (D1: page 3, lines 5 to 11 and 22 to 25; patent in suit: paragraphs [0003] to [0005] and [0014] to [0017]).

However, D5 also related to the problem of preventing undesired staining or spotting on laundry (column 1, lines 18 to 20 and lines 50 to 52). It was of no relevance that the problem considered in D5 was due to the presence of photobleaches (and not of photostable shading dyes) because, as apparent from e.g. D3 (paragraph [0004]), the skilled person knew that "spotting" or "staining" brought about by laundry detergent compositions in powder form, containing coloured particles, were due to the poor dissolution of the latter and their deposition at a high concentration in a single area of the fabrics to be washed. Seen in this context, it was apparent that the staining problem addressed in D5 in respect of photobleaches was the same as the spotting problem caused by photostable shading dyes addressed in the patent in suit. Accordingly, the Appellant presented two lines of arguments to demonstrate the obviousness of the subject-matter of claim 1, starting either from D1 or from D5.

Starting from D1

The claimed granule differed from the dye-containing granules disclosed on page 3, lines 5 to 11, of Dl only in terms of the nature of the carrier granule. The only features of claim 1 not disclosed in this citation were:

- that the particle size distribution was such that 90 weight% of the particles were less than 250 microns in diameter; and

- that the shading dye solids were absorbed into at least 80 weight % hydratable salt wherein the hydratable salt comprised light soda ash.

In the experimental comparison reported in the patent in suit no unexpected technical advantage had been shown in relation to these distinguishing features, for the following reasons:

- The comparative examples set out in the patent did not represent the closest state of the art.

- Moreover, only the particle size distribution of the light soda ash ingredient used was indicated in the examples, the particle size distribution of the final granule was not measured. Therefore, no conclusion could be drawn from the experimental data reported as to a possible influence of this feature on the alleged advantages of the invention.

- Furthermore, the examples of the patent did not even demonstrate that the shading dye granules according to the invention showed a level of

bleeding and spotting performance that was at least acceptable for the final user. Table 1 in the patent merely expressed a subjective assessment of the bleeding and spotting performance of the exemplified products.

Hence, the objective technical problem solved by the granule according to of the patent was merely the provision of an alternative shading dye granule.

In attempting to solve this objective technical problem, the skilled person would have considered D5, which related to the same problem of preventing undesired staining or spotting on fabrics in a laundry wash.

As D5 recommended

- that the photobleach containing granule should have a small average particle size (of preferably less than 300 microns, see column 2, lines 60 to 64) "in order to improve the solubility and thereby decrease staining tendencies still further", and

- that light soda ashes should be used as carrier for the photobleach ingredient (column 2, lines 37 to 44),

the subject-matter of claim 1 was an obvious alternative in view of a combination of D1 with D5. In this connection the Appellant stressed that whilst an average particle size of less than 300 microns (e.g. around 200 microns as disclosed for the granules exemplified in D5 at column 7, lines 9 to 11) did not necessarily correspond to a particles size distribution

as prescribed by claim 1 at issue, the skilled person would understand from D5 that diminishing the particle size was generally beneficial when seeking to control spotting. Hence, making the particle size even smaller was not inventive. Moreover, the fact that the particle sizes mentioned in the examples of D5 were slightly larger than required by claim 1 at issue most likely merely reflected that the particles of D5 had to be big enough to be seen, whereas the granules of the invention were not subject to any such requirement. Without the requirement that the particles had to be visible, the skilled person would reduce the particle size further to improve the spotting and staining performance.

Starting from D5

The subject-matter of claim 1 as granted only differed from Example 1 of D5 in that the former

- defined more precisely the particle distribution (possibly corresponding to a somewhat smaller average particle size),

- required a slightly larger amount of hydratable salt (80% instead of the 73.75% present example 1 of D5) and

- required that the granule contained a coloured substance which was a photostable shading dye and not a photobleach.

It had not been demonstrated that any particular technical effect could be attributed to these differences.
Thus, the objective technical problem starting from D5 was also the mere provision of an alternative granule.

The solution proposed was obvious in view of the disclosure, in D1, of shading dye containing granules.

XII. The submissions of the **Respondent** of relevance here can be summarized as follows.

Sufficiency of the disclosure

The alleged ambiguity of the expression "**light** *soda ash*" (emphasis added) was not an issue of insufficiency but, possibly, an issue of clarity as regards the upper limiting value for the density of the light soda ashes that may be used according to the invention. None of the available documents qualified soda ashes having very low densities, e.g around 500 kg/m^3, using another term than "light". Hence, at least any commercial soda ash having such low densities allowed to carry out the invention. Accordingly, the Appellant's objection was unfounded.

Entitlement to priority

The priority document (page 1, line 20 *et seq.*)contained a general definition of the expression "shading dye" that applied to the whole content of the priority document. Said definition thus applied to the dyes already used according to the prior art D1 as well as to the dye ingredient of the invention according to the priority document that were identified by the same expression. That this general definition referred to the features of the dyes disclosed in D1 was not in contradiction with its general character. Compared to the priority document, the application on which the patent in suit was granted merely expressed explicitly what was already implied by the general definition of

"shading dye" in the priority document. The objection of the Appellant was thus unfounded, and document D2 was not to be considered in the assessment of inventive step.

Inventive step

The Respondent considered that the chemistry of photobleaches and that of photostable shading dyes were totally different. Thus, it rejected the Appellant's allegation that the spotting problems respectively associated to the use of shading dyes and photobleaches would be regarded by the skilled person as one and the same technical problem. The teaching of document D3 was no credible evidence of common general knowledge, but merely a single patent application of the Appellant .

Thus, the skilled person would neither start from D5, nor would he search for a solution in the technical field to which document D5 belonged when seeking to improve, or provide an alternative to, the prior art of D1.

Already for this reason the Appellant's objection regarding inventive step had to be rejected.

Moreover, the information presented in Table 1 of the patent in suit demonstrated the good spotting and bleeding performance of the claimed granules, was based on experimental evidence evaluated by experts. The reported performance was at least acceptable to the final user. The Appellant's attempt to attribute thereto only a limited and subjective value, without submitting any counter-evidence, was thus to be rejected.

Thus, the technical problem solved by the claimed subject-matter vis-à-vis the shading dye-containing granule disclosed in D1 was to be seen in the provision of an alternative granule with an at least comparable performance.

Even assuming that the skilled person facing this problem would actually consider the disclosure of D5, the combination of documents D1 and D5 would not lead in an obvious manner to subject-matter with all the the combined features of claim 1 at issue, and in particular with the prescribed particle size distribution. Such a very fine particular size was not conventional for granules to be post-dosed into laundry powder compositions. D5 also merely suggested to incorporate photobleaches into granules of much larger particle size. Even the cited passage at page 2, lines 60 to 64 of D5 was consistent with the requirement that coloured particles disclosed in D5 had to be "speckles" i.e. had to be clearly visible. Hence, the prior art including D5 did not induce the skilled person to conceive a dye-containing particulate as fine as the claimed granule.

Reasons for the Decision

Sufficiency of disclosure

1. As emphasised by the Appellant there appears to be no generally accepted definition of the upper limit of the density range associated to "*light soda ashes*". For instance, as regards "light soda ash" D5 (column 2, lines 37 to 41) indicates a bulk density range of from 500 to 700 g/l, whereas D8 (Table 15) indicates the

value of 480 kg/m3 for "light" soda ash, and 960 kg/m3 for "dense" soda ash.

2. At the oral proceedings the Appellant, however, conceded that at least those soda ashes having a bulk density around 500 kg/m^3 as disclosed in D8 and D5 are consistently designated as "light" soda ashes in the documents cited.

3. Hence, for the Board, the skilled person aware of such available soda ashes available which are without any doubt "***light*** *soda ashes*" (emphasis added) within the meaning of claim 1, is thus in a position to provide granules comprising "*light soda ash*" as required by claim 1 at issue and to thereby carry out the invention.

4. For the Board, the argument that for some soda ashes of somewhat higher bulk density it could not be unambiguously determined whether or not their incorporation would lead to granules falling within the ambit of claim 1 is an argument relating to the clarity of the ambit of the claim (Article 84 EPC). However, lack of clarity is not a ground for opposition under Article 100 EPC. Moreover, this alleged lack of clarity concerns only the boundary of the claim as regards the upper limit of the bulk density range to be considered, rather than permeating the whole claim. The Appellant did not show that due to this ambiguity of the term "*light*", the person skilled in the art was not in a position to prepare, without undue burden, a granule as claimed using some relatively dense soda ash which could still be considered to be of the "*light*" category, or the he was in some other way deprived of the promise of the invention (see e.g. T 608/07,

Reasons 2.5.2, first paragraph).

5. Accordingly, in the Board's judgement, the patent in suit is not objectionable under Article 100(b) EPC.

Entitlement to priority

6. The Appellant maintained that the claimed subject-matter was not entitled to the claimed priority date because the priority document did not disclose granules with all the features of claim 1, in particular with all features further defining the shading dye ingredient to be used, i.e. *"wherein shading dye is one or more water-soluble photostable dyes, substantive to cotton, and having a peak absorption wavelength on cotton of from 540 nm to 650 nm, preferably from 570 to 630 nm".*

6.1 According to the Appellant, the passage of the priority document mentioning these features (page 1, line 20, to page 2, line 11) only described the dyes used according to prior art document D1 referred to in said passage. In particular, the final sentence of said passage reading "such a dye or combination off dyes may be referred to as a shading dye" (page 1, lines 29 to 30) was not a general definition of the term "shading dye", applicable also when this term was used in the remainder of the priority document, i.e. when referring to the invention disclosed and claimed in the priority document.

6.2 For the Boards it is, however, beyond doubt that the skilled person reading the quoted sentence in the priority document would understand this wording as the definition of the term "shading dye" generally applicable throughout the entire priority document. The

fact that this definition is given, within one and the same paragraph, after a listing of all the features of the dyes said to be used according to D1, and before providing some further comments on the disclosure of D1, is not in manifest contradiction with the general character and applicability of this definition.

6.3 The fact that, when filing the application upon which the patent in suit was granted, the Applicants decided to additionally incorporate the express definition starting with the wording "*In this specification 'shading dyes' means...*" (page 4, second paragraph, of the application as filed, published under the PCT as WO 2007/096052 A1), does not, for the Board, imply that this information was not contained in the priority document. On the contrary, the Board is convinced that in the present case this amendment of the description (of the priority document) made upon filing the subsequent application merely serves the purpose of expressly stating something that was already implied by the text of the priority document.

6.4 Thus, in the Board's judgement, the patent is indeed entitled to the claimed priority date, with the consequence that D2, published after this date, is not prior art under Article 54(2) EPC, and is thus not to be considered in the assessment of inventive step.

Inventive step

7. The invention

7.1 The invention relates to a granule containing a shading dye for use as an additive in laundry powder composition, to a detergent powder composition comprising such a granule and to a process for

manufacturing such a granule (see independent claims 1, 3 and 4).

7.2 According to the description of the patent in suit (see e.g. paragraphs [0014], [0015] and [0017]), the granule according to the invention is supposed to mitigate the problems
- that "*a highly loaded shading dye granule ... becomes visible against an uncoloured detergent powder, due to its contrasting colour*",
- of "*spotting damage by the shading dye if a fabric is left in contact with the powder*", and
- of "*bleeding of the shading dye into the* [detergent powder] *formulation over time*".

8. The closest prior art

8.1 The Appellant argued that either of D1 and D5 could be used as the starting point in the assessment of inventive step.

8.2 According to established case law of the boards of appeal the closest prior art is normally a prior art document disclosing subject-matter conceived for the same purpose or addressing the same technical problem as the claimed invention.

8.3 For the Board, document D1 represents the closest prior art in view of the similarities in terms of the technical problem(s) addressed and the products disclosed.

8.3.1 Indeed, D1 discloses (claim 1 and page 3, first paragraph, to page 6, second paragraph) granules to be added to detergent powders, which granules, like those according to the patent in suit, contain shading dyes

that are photostable, substantive to cotton and have a peak adsorption frequency on cotton in the range from 540 to 650 nm. Furthermore, D1 also addresses the spotting problem mentioned in the patent in suit.

8.3.2 More particularly, D1 discloses (page 3, lines 5 to 11) granules containing such shading dyes to be post-added to a main detergent powder, whereby the "spotting and dye-damage on the clothes to be treated" can be avoided if the concentration of the dye in the granules is less than 0.1%.

In the Board's judgement, these granules disclosed in D1 represent the most appropriate starting point for the assessment of inventive step

8.4 In the Board's judgement, D5 does not, as submitted by the Appellant, represent the closest prior art for the following reasons.

8.4.1 D5 addresses the spotting of fabrics brought about by photobleach ingredients. The Appellant argued that a skilled person would consider irrelevant that the fabric spotting addressed in D5 is associated to the presence of photobleaches, rather than to the presence of photostable shading dyes (as in the patent in suit), since, as apparent from e.g. D3 (paragraph [0004]), the staining problem addressed in D5 (in respect of photobleaches) was not connected to a precise dye chemistry and was thus similar to the spotting problem caused by photostable shading dyes addressed in the patent in suit.

8.4.2 However, as pointed out by the Respondent in questioning this view of the Appellant, the considerations expressed in D3, a single patent

document authored by the Appellant, does not necessarily reflect common general knowledge in the field of detergent formulations. Hence, the Board is not convinced that D5 represents a more appropriate starting point for the assessment of inventive step than D1.

9. The technical problem

9.1 The Board accepts that, as submitted by the Appellant, the patent in suit contains no element of information showing, or making plausible, that the spotting and bleeding performance of granules according to claim 1 is improved compared to that of granules according to the closest prior art (see point 8.3.2, *supra*).

9.2 Accordingly, in the light of the closest prior art, the technical problem can be seen in providing a further shading dye-containing granule with an at least acceptable spotting and bleeding performance.

9.3 The solution

As the solution to said technical problem, the patent in suit proposes the shading dye-containing granule according to claim 1, which is characterized, *inter alia*, in that it comprises "*0.05 to 0.5 wt% shading dye solids absorbed into at least 80 wt% hydratable salt wherein the hydratable salt comprises light soda ash*" and in that it has a "*a particle size distribution such that 90 wt% of the particles are less than 250 microns, in diameter*".

10. Success of the solution

10.1 As apparent from D1, limiting the concentration of

shading dye in the particles contributes to improving the spotting performance (point 8.3.2, *supra*).

10.2 The technical information in Table 1 of the patent summarises the experimental results and the visual assessment of spotting and bleeding. In the absence of any counter-evidence, the Board has no reason to call into question the results (relative ranking) of said (inherently subjective) visual assessment performed by the Respondent or to consider that the reported spotting and bleeding performances achieved in the examples could be considered unsatisfactory by a final user.

10.3 Considering the experimental data in the patent in suit the Board accepts that the posed technical problem (point 9.2, s*upra*) is effectively solved by the claimed granule.

11. Non-obviousness of the solution

11.1 A question to be answered in the assessment of obviousness is whether the skilled person seeking to solve the technical problem (point 9.2, *supra*) would consider setting the particle size distribution of the granules such that "*at least 90 wt% thereof have a diameter of less than 250 microns*" as prescribed by claim 1 at issue, when putting into practice the teaching of the closest prior art D1.

11.2 Document D1

Document D1 is silent on the size distribution of the granules into which the shading dye is to be or is incorporated, and there is no evidence on file showing that the skilled person would opt for a distribution as

prescribed by claim 1 at issue. Quite on the contrary, the Board has no reason to doubt the accuracy of the Respondents' statement, undisputed by the Appellant, that the particle size distribution prescribed by claim 1 at issue is much finer than those typically characterising granules to be post-dosed in laundry powder compositions.

11.3 Document D5

11.3.1 The only disclosure indicated by the Appellant as suggesting the use of such fine granules is the teaching in document D5 (column 2, lines 60 to 64) that the photobleach-containing "speckles" disclosed therein have "a number average particle size of ... preferably less than 300 microns" since "this can improve the solubility and thereby decrease staining tendencies" (i.e. spotting problems). According to the Appellant this disclosure would induce the skilled person, who in the present case was not necessarily seeking to provide clearly visible "speckles", to envisage providing substantially finer than those disclosed in D5, since he would understand from the quoted passage that any further reduction in particle size would inevitably reduce staining/spotting problems. By opting for such a fine particle size distribution when providing granules in accordance with the teaching of D2, the skilled person would arrive at a granule according to claim 1 at issue without ingenuousness.

11.3.2 However, the same considerations (points 8.4.1 and 8.4.2, *supra*) that led the Board to conclude that D5 does not address the same issues as the patent in suit and D1, also justify the conclusion that a skilled person seeking to solve the stated technical problem

would not regard the disclosure of D5 as a source of potentially relevant information.

11.3.3 Nevertheless, for the sake of completeness, the Board considers it appropriate to additionally stress that the "speckles" of D5 may not be too small since they must remain visible for the end user. Thus, even assuming, for the sake of argument only but in favour of the Appellant, that the skilled person seeking to solve the stated technical problem would consider the contents of D5, it must still be considered that the entire teaching of D5 (including the quoted passage at column 2 and the examples), remains consistently limited to the production of "speckles" which are clearly visible.

Hence, for the Board, D5 might at most be considered to suggest the use of (photobleach-containing) particles having a number average size of less than 300 µm, or around 200 µm (see examples) but being large enough to remain clearly visible.

Accordingly, the Board does not accept the argument of the Appellant, that D5 suggests also the possibility of providing particles that are much smaller than those conventional for "speckles" and, thus, not or hardly visible to the naked eye.

11.4 Hence, the Board is not convinced that the skilled person starting from D1 and seeking to solve the technical problem posed would, without hindsight, by induced by common general knowledge or the state of the art invoked by the Appellant to set the particle size distribution such that the granule so obtained would fall within the ambit of claim 1 at issue.

11.5 In the Board's judgement, the subject-matter of claim 1 thus involves an inventive step (Articles 52(1) EPC and 56 EPC). Consequently, the more specific granule according to dependent claim 2, the detergent powder composition according to claim 3 comprising the inventive granule according to claim 1, and the process according to claim 4 for manufacturing the inventive granule also involves an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano B. Czech

Decision electronically authenticated