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**Datasheet for the decision
of 16 January 2015**

Case Number: T 1893/12 - 3.3.06

Application Number: 01967217.9

Publication Number: 1287198

IPC: D06M23/02, D06M13/00, D06F75/14

Language of the proceedings: EN

Title of invention:
IRONING AID COMPOSITION

Patent Proprietors:
Unilever N.V.
Unilever PLC

Opponent:
Henkel AG & Co. KGaA

Headword:
Ironing aid composition/UNILEVER

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

Keyword:
Inventive step - (yes)
Inventive step - non-obvious combination of known features
New line of argumentation presented for the first time at oral
proceedings and without submitting a copy of the evidence ref
erred to - admissible (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1893/12 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 16 January 2015

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 28 June 2012
rejecting the opposition filed against European
patent No. 1287198 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman B. Czech

Members: E. Bendl

 U. Lokys

Summary of Facts and Submissions

- I. The appeal lies from the decision of the opposition division to reject the opposition filed against European patent No. 1 287 198.
- II. The independent claims of the patent as granted read as follows:

"1. An ironing aid for use in a steam chamber of a steam iron comprising:

- (a) 0.001 to 5 wt.% of a water-soluble perfume;*
- (b) water with a French Hardness of 20 or below;*
- (c) 0.1 ppm to 3 wt.% of at least one water-soluble preservative whereby said water-soluble preservative is selected from benzyl alcohol, phenoxy ethanol and mixtures thereof; or at least one isothiazolone-based compound; and*
- d) less than 0.1 wt.% of anionic, cationic, nonionic and amphoteric surfactant."*

"11. A concentrate ironing aid composition, which when diluted with water having a French hardness of 20 or below provides an ironing aid composition according to any one of the preceding claims 1 to 10."

"12. Use of an ironing aid composition according to any one of the preceding claims 1 to 11 in a steam iron."

Claims 2 to 10 refer to preferred embodiments of claim 1.

- III. In the contested decision the opposition division came to the conclusion that the subject-matter of the claims as granted was novel and involved an inventive step

with regard to the cited prior art, including the following documents:

D3 = DE 296 00 628 U1,
D6 = EP 0 819 789 A1,
D7 = GB 2 333 302 A and
D8 = EP 0 340 938 A1.

- IV. In its statement of the grounds of appeal the appellant (opponent) held that the combination of the closest state of the art, represented by D3, with D8 lead to the claimed invention in an obvious way, in particular taking into account the teachings of documents D6 or D7.
- V. In their reply of 7 February 2013 the respondents (proprietors) rebutted these arguments. With said reply, they also submitted a product information document concerning the preservative used according to D6 (Bioban CS-1135).
- VI. Oral proceedings took place on 16 January 2014. The issues addressed were inventive step having regard to claim 1 and the admissibility of a new line of arguments presented by the appellant for the first time at the oral proceedings.
- VII. The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondents requested that the appeal be dismissed.

- VIII. The arguments of the **appellant**, as far as relevant to the present decision, i.e. concerning inventive step as regards claim 1 as granted, can be summarised as follows:

- D3 was the closest state of the art.
- The skilled person knew that commercial ironing aids contained a preservative.
- In selecting a suitable preservative for the composition according to D3 the skilled person would be limited to the compounds listed in the EU directive 98/8/EC and would select only those preservatives with a high boiling point and would thus arrive at the claimed subject-matter in an obvious manner.
- However, it was also known from D6 or D7 that preservatives can be added to steam ironing compositions.
- Thus, the combination of D3 with D8, disclosing an isothiazolone-based compound as preservative ingredient, would lead to the claimed subject-matter in an obvious way.
- The claimed subject-matter therefore did not involve an inventive step.

The arguments of the **respondents** in this respect, as far as relevant to the present decision, were as follows:

- D3 was the closest state of the art.
- The appellant's reference to the EU directive 98/8/EC was belated and no copy thereof permitting a check of its content and relevance was provided.
- The line of argument based on this directive should therefore be disregarded.
- The preservatives used in D6 and D7 were less suitable for the claimed purpose, as they released dangerous substances upon heating in the steam chamber of an iron.

- D8 did not concern the the technical field of ironing aids for steam irons. The skilled person would thus not consider the contents of this document and/or combine it with D3.
- Since no hint was given in the available documents, that isothiazolone-based compounds were suitable for processing at steam ironing conditions, the claimed subject-matter involved an inventive step.

Reasons for the Decision

Inventive step - Claims as granted

1. The invention

The invention relates to an ironing aid composition, its use in a steam iron, and a concentrate which after appropriate dilution provides said ironing aid composition (see paragraph [0001] of the patent in suit).

According to the patent in suit (paragraph [0001]), the ironing aid composition of the invention is supposed to be suitable for being poured directly into the water reservoir chamber of a steam iron wherein the composition is vaporised and released through the steam vents of the iron. The composition according to the invention is supposed to overcome disadvantages of known ironing aid compositions. Upon use, the composition should not, *inter alia*, produce burnt odours, release harmful or irritating substances, leave unacceptable residues in the iron or brown marks or stains on the fabric, or be contaminated by bacteria

and fungi (paragraphs [0005], [0008], [0009], [0011], [0025], [0026], [0031] and [0065]).

2. Closest prior art

2.1 Document D3 relates to an ironing aid composition to be poured directly into the steam chamber of a steam iron. The only example discloses a mixture consisting of 99,8 - 99,99 wt.% distilled water and 0,2 - 0,01 wt.% water-soluble perfume.

2.2 For the board, considering the nature and the purpose of the compositions disclosed in D3, this document is the closest prior art for the assessment of inventive step. The parties both agreed that D3 was an appropriate starting point.

3. Technical problem

The board accepts that in the light of the closest prior art as disclosed by D3, the technical problem can be formulated, in accordance with the appellant's submission at the oral proceedings, in the provision of an ironing aid composition which is improved in terms of stability against microbial/fungal contamination whilst, upon use, also being stable against thermal decomposition so that no chemicals harmful to health and nor unacceptable residues are formed.

4. Solution

As the solution to said technical problem the patent in suit proposes the ironing aid according to claim 1, which is in particular characterised by the presence of component (c), defined as follows:

"(c) 0,1 ppm to 3 wt.% of at least one water-soluble preservative whereby said water-soluble preservative is selected from benzyl alcohol, phenoxy ethanol and mixtures thereof; or at least one isothiazolone-based compound".

4.1 Success of the solution

In the absence of evidence to the contrary the board has no reason to doubt that by including water-soluble preservative compounds as defined in claim 1 into a composition according to D3, the desired anti-microbial/fungal effect can be achieved without the generation of harmful or irritating compounds or of undesirable deposits upon use of the composition in a steam iron. This was also not disputed by the appellant.

The stated technical problem is thus effectively solved by the compositions according to claim 1 as granted.

5. Obviousness of the solution

5.1 It remains to be decided whether the claimed solution was obvious having regard to the state of the art.

The appellant held that this was the case in view of a combination of D3 with D8, in particular taking also into account that D6 and D7 referred to the use of preservatives in ironing aid compositions.

5.2 As already mentioned above, D3 discloses ironing aid compositions not containing a preservative. Hence, D3 taken alone cannot suggest the incorporation of specific preservatives in specific amounts into the composition described.

- 5.3 Document D6 (see page 2, lines 24/25, page 3, lines 52 and 56/57) relates to a method of ironing clothes, which comprises the step of directing steam to the surface of the cloth, the ironing aid composition used containing a silicone lubricant, and preferably, a fragrance and a preservative to protect it against microbial attack. The only preservative specifically mentioned is 4,4-dimethyl oxazolidine.
- 5.3.1 As pointed out by the respondents, this preservative differs in terms of chemical structure and properties from the preservatives required according to claim 1 at issue.
- 5.3.2 Moreover, it is reported to be "harmful to inhale". In particular "breathing of vapour" should be avoided when handling this product in concentrated form as apparent from the "product information" concerning "Bioban CS 1135", attached to the respondents' letter of 7 February 2013, page 5, chapter "Toxicity".
- 5.3.3 Hence, D6 does not appear to suggest the use of preservatives with little propensity to generate toxic fumes, let alone of the ones listed in claim 1 at issue.
- 5.4 Document D7 concerns solutions for use in steam irons (page 1, lines 2/3, claim 1) comprising a water-soluble fragrance and a water-soluble antimicrobial preservative, preferably 0,02 to 0,3% of a preservative such as "Dowicil 200" (page 3, line 26, page 4, line 15, page 5, lines 16-20), no other preservative being specifically mentioned.

- 5.4.1 At the oral proceedings it remained undisputed, that "Dowicil 200" bore no structural resemblance to the preservatives listed in claim 1 at issue and was, moreover, known to release formaldehyde (see also paragraph [0026] of the patent in suit).
- 5.4.2 Hence, D7 does not appear to suggest either the use of preservatives with little propensity to generate toxic fumes, let alone of the ones listed in claim 1 at issue.
- 5.5 Document D8 discloses isothiazolone biocides as preservative ingredients of compositions such as liquid dishwashing preparations and liquid soaps (page 2, lines 1 - 5), but does not refer to steam ironing compositions or the use of the isothiazolone-based compounds under conditions comparable to those prevailing in the steam chamber of an iron.
- 5.5.1 Thus, D8 *per se* does not give any hint to use the isothiazolones in steam iron liquids.
- 5.5.2 Moreover, when starting from D3, the skilled person would not, without the benefit of hindsight, consider the teaching of D8, as this document does not mention steam ironing at all, but relates, instead, to compositions used in applications which do not involve the very high temperatures occurring in steam ironing and which normally have a different composition compared to an ironing aid composition as claimed.
- 5.5.3 On the contrary, when looking for a suitable preservative for a steam ironing composition, the skilled person would in the first place consider the information available in the same or in a similar technical field of application. A combination of D3

with D6 or D7 would, therefore, be more obvious than a combination with D8. However, as already indicated above, a combination of D3 with either D6 or D7 does not lead to the claimed subject-matter in an obvious manner.

5.6 The board concludes that the skilled person starting from a composition according to D3 and seeking to solve the stated technical problem (see point 3 *supra*) was not induced by the prior art invoked by the appellant to additionally incorporate into the composition one of the specific preservative compounds required according to claim 1 at issue.

5.7 In the board's judgement, the compositions according to claim 1 as granted, and claims 2 to 9 dependent thereon, thus involve an inventive step (Articles 52(1) and 56 EPC). Consequently, the concentrate according to claim 10 as granted, which gives the inventive composition according to claim 1 upon dilution with soft water, and the use according to claim 11 as granted of the inventive ironing aid compositions, likewise involve an inventive step.

Non-admissibility of the Appellant's new line of arguments

6. At the oral proceedings before the Board, the appellant argued for the first time that the claimed subject-matter was obvious as the skilled person, knowing that commercial ironing aid compositions necessarily required the addition of a preservative, would only have had a very limited choice of suitable compounds due to legal provisions regulating the commercial use of biocides. In this connection it referred to EU directive 98/8/EC relating to biocides without, however, providing the board and the adverse party with

a copy of this directive. The Appellant submitted that said directive referred to a list of acceptable preservative compounds, and that the skilled person would select, from said list, only compounds having a high boiling point making them suitable for being incorporated into an ironing aid composition. Among these compounds were also the preservatives according to item (c) of claim 1. Incorporating one of the latter into the composition disclosed in D3 was obvious for these reasons alone.

6.1 Regarding the admissibility of this line of argument, the board took into account the following aspects:

6.1.1 The new line of argument was presented for the first time at the oral proceedings before the boards, i.e. at the latest possible point in time, and thus took the adverse party and the board by surprise.

6.1.2 No hard copy of the cited EU directive was made available to the board and the adverse party.

Thus, neither the board nor the adverse party was in a position to check the actual content of this directive and, hence, the validity of the argumentation based thereon, at least not without an adjournment of the oral proceedings going against the need for procedural economy.

6.1.3 The only explanation for the chosen course of action given by the representative of the appellant at the oral proceedings was that he only took over the file on short notice prior to the oral proceedings.

However, according to case law, a change in representation is usually not considered as a

sufficient justification for a very late amendment to a party's case.

Moreover, the board observes in this connection that the representative present at the oral proceedings had signed the letter dated 16 December 2014, announcing its participation in the oral proceedings. Thus, he had been involved in the case at least one month prior to the oral proceedings, but had, nevertheless, failed to present its new argument and evidence in written form in advance of the oral proceedings.

- 6.1.4 Last but not least, it is more than questionable whether the information content of the invoked directive is of higher *prima facie* relevance than the evidence already previously on file:

At the oral proceedings, being prompted by the board, the appellant conceded that the "list of biocides" allegedly referred to in said EU directive also included the two preservatives used in the preparations according to D6 and D7.

As mentioned *supra*, said preservatives are prone to produce toxic degradation products and are therefore less suitable for use in a ironing aid composition. Hence, it appears that the skilled person aware of the alleged content of said directive would not, absent any *ex post facto* considerations, be oriented towards the use of the preservatives required by claim 1 at issue.

- 6.2 Considering all of the above circumstances, the board decided not to admit said new line of argumentation (Article 114(2) EPC and Articles 13(1)(3) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Magliano

B. Czech

Decision electronically authenticated