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**Datasheet for the decision
of 4 February 2016**

Case Number: T 2265/12 - 3.3.07

Application Number: 00949314.9

Publication Number: 1200058

IPC: A61K8/36, A61Q19/00, A61K8/67,
A61Q19/02, A61Q19/08

Language of the proceedings: EN

Title of invention:
SKIN CARE COMPOSITION CONTAINING PETROSELINIC ACID

Patent Proprietor:
Unilever PLC
Unilever N.V.

Opponent:
L'OREAL

Relevant legal provisions:
EPC Art. 54, 113(1)

Keyword:
Right to be heard -
no oral proceedings before board of appeal necessary
Novelty - implicit disclosure (no)



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2265/12 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 4 February 2016

Appellant: Unilever PLC
(Patent Proprietor 1) Unilever House
Blackfriars
London
Greater London EC4P 4BQ (GB)

Appellant: Unilever N.V.
(Patent Proprietor 2) Weena 455
3013 AL Rotterdam (NL)

Representative: Corsten, Michael Allan
Unilever N.V.
Unilever Patent Group
Olivier van Noortlaan 120
3133 AT Vlaardingen (NL)

Appellant: L'OREAL
(Opponent) 14, rue Royale
75008 Paris (FR)

Representative: Leonard, Armelle
L'Oréal
D.I.P.I.
25-29, Quai Aulagnier
92665 Asnières-sur-Seine Cedex (FR)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 August 2012 concerning maintenance of the
European Patent No. 1200058 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. 1 200 058 was granted with 12 claims, claim 1 reading as follows:
- "1. A topical composition comprising:
- (a) petroselinic acid and/or derivatives thereof;
 - (b) a retinoid selected from retinoic acid, retinol, retinyl acetate, retinyl propionate, retinyl linoleate, and/or a retinoyl ester; and/or a LRAT/ARAT inhibitor selected from
 - a fatty acid amide selected from amides of essential fatty acids, mono- and diethanolamides and phosphatidylethanolamides of palmitic acid and coconut oil, diethyl cocamide, dimethyl palmitide, myristoyl sarcosine,
 - a hydroxy fatty acid amide,
 - a ceramide selected from ceramide 6, pseudoceramides, neoceramides, acetyl sphirtgosine,
 - a melinamide,
 - an imidazolidinone,
 - a cyclic aliphatic unsaturated compound,
 - a terpene,
 - a fatty hydroxyethyl imadazoline surfactant, or
 - mixtures thereof; and
 - (c) a dermatologically acceptable vehicle."
- 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: EP-A-0 709 084
D2: US-A-5 716 627

D3: Cosmetic Research Int., April 1994, pages 86, 93 and 94

D4: US-A-5 747 051

D5: Cosmetic Research Int., January/February 1999, page 52

D7: EP-A-1 109 527

D10: EP-A-0 716 849

D11: US-A-5 578 641

D12: US-A-5 759 556

D13: Cosmetic Research Int., 1996, "Estee Lauder Fruition Extra Multi-Action Complex"

- IV. The decision of the opposition division was based on the patent as granted as main request and on an auxiliary request filed during oral proceedings on 5 July 2012.

In claim 1 of the auxiliary request ingredient (a) was limited to petroselinic acid, thereby deleting the option expressed by "and/or derivatives thereof".

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

- a) The patent as granted was considered as sufficiently disclosed, as it could be assumed that all conditions cited in claims 11 and 12 could be treated by means of the claimed compositions and no evidence was available proving the contrary. Moreover, the examples provided sufficient information for the skilled person to carry out the invention.
- b) Document D3 disclosed a composition comprising *inter alia* coriander oil, lactamide MEA and farnesol. As coriander seed oil was rich in

petroselinic acid triglyceride according to the patent in suit, D3 disclosed a composition comprising a petroselinic acid derivative and LRRT/ARAT inhibitors (lactamide MEA and farnesol). The argument that "coriander oil" as cited in D3 might be different from "coriander seed oil" could not be accepted, as it was not supported by evidence.

- c) The subject-matter of claim 1 according to the auxiliary request was novel over document D3, as it disclosed coriander oil, but not petroselinic acid as such. Moreover, it was novel over the disclosures of documents D5, D7 and D13.

- d) The problem solved by the subject-matter of claim 1 of the auxiliary request with respect to the documents cited in the various approaches used to attack inventive step (D1, D2, D3, D4, D10, D11, D12), which all related to the treatment of visible signs of ageing of skin, was the provision of an anti-ageing composition for the skin with enhanced anti-ageing properties. This could be considered as solved in view of the results in tables 6 and 7 which showed a synergistic effect by the combination of petroselinic acid and one of the specific LRAT/ARAT inhibitors or one of the specific retinoid listed in claim 1. As none of the cited documents provided a hint that those combinations exhibited a synergistic effect, the requirement of inventive step was met.

VI. The appeal by the patent proprietors (appellants) lies against the decision of the opposition division announced at the oral proceedings on 5 July 2012 concerning maintenance of the patent in amended form.

With the statement setting out the grounds of appeal, the appellants submitted the following pieces of evidence:

D16: CTFA International Cosmetic Ingredient Dictionary, fourth edition, 1991, page 118

D17: International Cosmetic Ingredient Dictionary and Handbook, tenth edition, 2004, volume 1, page 461

D18: M. Grieve, A Modern Herbal, Tiger Books International, London, 1998, pages 221 and 222

- VII. The opponent (respondent) also filed an appeal with letter of 29 October 2012, but withdrew it with letter of 21 December 2012. During the course of the appeal proceedings the respondent did not file any submission, nor any request, in particular no request for oral proceedings.
- VIII. The arguments of the appellants, as far as relevant to the present decision, may be summarised as follows:

Novelty of granted claim 1

The composition of granted claim 1 was novel over the disclosure in D3, as "coriander oil" (included in the relevant composition of D3) was different from "coriander seed oil", which was indicated in the patent as containing petroselinic acid triglyceride. Documents D16 to D18 showed that coriander oil was obtained from the dried fruit of coriander and was a volatile oil different from coriander seed oil. Petroselinic acid and its triglyceride were not volatile and were not included in coriander oil. On that basis the composition disclosed in D3 did not contain petroselinic acid and could not be novelty destroying.

- IX. The appellants requested that the decision under appeal be set aside and the opposition be rejected. Oral proceedings were requested in case the Board decided otherwise.
- X. The respondent did not file any request during the appeal proceedings.

Reasons for the Decision

Article 113(1) EPC

1. As the present decision grants the request of the appellants on the basis of the arguments provided in the statement setting out the grounds of appeal and there were no requests, nor any submission by the respondent in appeal, the decision may be taken in writing while fulfilling the requirements of Article 113(1) EPC.

Novelty of granted claim 1 over document D3

2. Document D3 discloses a revitalising skin care composition comprising *inter alia* lactamide MEA, farnesol and coriander oil in a dermatologically acceptable vehicle (page 93, left column, fourth composition). It was not disputed that lactamide MEA and farnesol are LRRT/ARAT inhibitors according to claim 1 (see patent in suit, paragraphs [0028], [0040], [0071] and [0072]).
- 2.1 The crucial issue is whether the presence of coriander oil in the composition is an implicit disclosure of a petroselinic acid derivative. This was considered to be the case in the appealed decision in view of the disclosure in the patent, which lists coriander seed

oil as one of the oils rich in petroselinic acid triglyceride (paragraph [0015]), and of the lack of evidence to show that "coriander oil" might be different from "coriander seed oil".

- 2.2 The situation is, however, different in the present proceedings, as the appellants have provided evidence to show that coriander oil is not a synonym of coriander seed oil and that it does not necessarily contain petroselinic acid derivatives. Document D17 states that *Coriandrum sativum* fruit oil is the volatile oil obtained from the dried fruit of *Coriandrum sativum* and is commonly named "coriander oil" (page 461, middle column), while *Coriandrum sativum* seed oil is the fixed oil obtained from the seeds of *Coriandrum sativum* and is commonly named "coriander seed oil" (page 461, bottom of middle column and left column). This is confirmed by document D16, which states that coriander oil is a volatile oil obtained from the dried fruit of *Coriandrum sativum* (page 118, left column), and D18, which states that coriander fruit contains about 1 per cent of volatile oil (page 222, right column, first full paragraph).
- 2.3 This evidence, which is taken from dictionaries and textbooks and has not been contested by the respondent, clearly shows that the disclosure of coriander oil in D3 cannot be considered as a disclosure of coriander seed oil, so that the argument that it implies a disclosure of petroselinic acid triglyceride in view of the patent itself is not correct. On the contrary, the indication that coriander oil is a volatile oil renders not plausible that it contains a petroselinic acid triglyceride, which is non-volatile. Moreover, no evidence is available that coriander oil contains a petroselinic acid derivative.

- 2.4 In view of that, the presence of a petroselinic acid derivative in the relevant composition of D3 is not directly and unambiguously disclosed and novelty of the claimed composition with respect to D3 must be acknowledged.

Conclusions

3. In the decision under appeal it was decided that the patent could not be maintained as granted only in view of lack of novelty over document D3. The objections of lack of sufficiency and lack of inventive step, which equally applied to the granted patent and to the auxiliary request, were discarded by the opposition division. These parts of the decision have not been contested in appeal and no arguments have been provided in this respect. As the Board has come to the conclusion that claim 1 of the patent as granted is novel over document D3 and sees no reasons to reopen the case on issues which have not been contested in appeal, nothing stands in the way of maintenance of the patent as granted, with the consequence that the opposition is to be rejected.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The opposition is rejected.

The Registrar:

The Chairman:



S. Fabiani

J. Riolo

Decision electronically authenticated