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**Datasheet for the decision
of 8 June 2017**

Case Number: T 0194/14 - 3.3.06

Application Number: 98948560.2

Publication Number: 1115835

IPC: C11D17/06, C11D17/00, C11D11/00

Language of the proceedings: EN

Title of invention:
SOLID DETERGENT COMPOSITIONS

Patent Proprietor:
THE PROCTER & GAMBLE COMPANY

Opponent:
Henkel AG & Co. KGaA

Headword:
Solid detergent compositions / P&G

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments (all requests) - added subject-matter (yes)

Decisions cited:

Catchword:



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Case Number: T 0194/14 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 8 June 2017

Appellant: THE PROCTER & GAMBLE COMPANY
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 28 November
2013 revoking European patent No. 1115835
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman B. Czech
Members: P. Ammendola
J. Hoppe

Summary of Facts and Submissions

- I. This appeal is against the decision of the Opposition Division revoking European patent No. 1 115 835.
- II. Claim 1 of the patent as granted is directed to "*a solid detergent composition*" defined *inter alia* in terms of its chemical components and their relative amounts.
- III. In the decision under appeal the Opposition Division found that none of the then pending sets of amended claims complied with all the requirements of the EPC. More particularly, some of these requests were found to be objectionable under Article 123(2) EPC, *inter alia* because (see Reasons, 6.1 to 7.2, in particular first and last paragraphs of point 6.2)

the

"copolymer of acrylate and maleic acid or anhydride"
component (herein below **A/MA copolymer**)

and the

"highly water-soluble" (herein below **HWS**) *"carboxylate-
or carboxylic acid-containing compound in an intimate
mixture with one or more surfactants"*

referred to as one and the same HWS component in the independent claim 1 of these requests, were only disclosed in the application as filed as two different components of the detergent composition of the invention.

IV. With its statement of grounds of appeal, the Appellant (Patent Proprietor) filed three sets of amended claims as Main Request and First and Second Auxiliary Requests.

V. Claim 1 according to said **Main Request** reads (two of the features not already comprised in claim 1 of the application as filed being emphasised by the Board; they are referred hereinafter as features **I** and **K**, respectively):

*"1. A solid detergent composition in the form of granules, the composition comprising from 10 to 60 wt % of a surfactant system and having a maximum Residues Index of 25 and a maximum Secondary Residues Index of 15, wherein the composition is free of phosphate-containing builder material, wherein the composition comprises from 1% to 80% by weight of a water-soluble and/or partially water-soluble builder compound, wherein the composition comprises below 9 wt % aluminosilicate builder, **wherein the composition comprises a highly water-soluble carboxylate- or carboxylic acid-containing compound in an intimate mixture with one or more surfactants**, wherein the surfactant comprises an anionic surfactant of which 50 to 100 wt % is an anionic sulphonate surfactant and **wherein the highly water-soluble carboxylate- or carboxylic acid-containing compound is a copolymer of acrylate and maleic acid or anhydride.**"*

Claim 1 of said **First Auxiliary Request** only differs from that of the Main Request in that in the former "the maximum Secondary Residues Index" is defined to be "5" (instead of "15").

Claim 1 of said **Second Auxiliary Request** only differs from that of the Main Request in terms of the following additional features, inserted after "... 9 wt % *aluminosilicate builder*":

"wherein the composition comprises amorphous sodium silicate in amounts below 2 wt % based on the detergent composition as a whole",

and in terms of the following features appended to it:

"and wherein more than 50 wt % of the anionic surfactant in the composition is included in the said intimate mixture."

- VI. In its reply dated 24 October 2014, the Respondent (Opponent) disputed the admissibility of the appeal, as well as the admissibility of the Appellant's claim requests into the proceedings. It also argued *inter alia* that the respective claim 1 of each of these requests did not comply with Article 123(2) EPC because several combinations of features were not disclosed in the original application.
- VII. In a further letter of 11 June 2015, the Appellant rebutted all the Respondent's objections.
- VIII. The Respondent also filed a further submission dated 20 January 2017 and complemented the raised objections, *inter alia* the absence of a basis for the combination of features I and K in the original application. In particular, the Respondent stressed the fact that the polymeric WS builders were only disclosed as being possibly present in addition to other builders.

IX. The Parties were summoned to oral proceedings. In a communication issued in preparation therefore, the Board expressed, *inter alia*, a positive preliminary opinion regarding the admissibility of the appeal. The Board also indicated that, at the oral proceedings, the Parties were expected to be prepared to address also the compliance of the Appellant's claim requests with Article 123(2) EPC.

X. By letter of 9 May 2017 the Appellant informed the Board that it was not going to be represented at the oral proceedings.

XI. Oral proceedings took place as scheduled on 8 June 2017 in the absence of the Appellant. During the hearing the Respondent explicitly withdrew its objection as to the admissibility of the appeal.

XII. Requests

The Appellant (Patent Proprietor) requested in writing that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of:

- the set of claims of its Main Request

or if that is not possible,

- its First Auxiliary Request or
- its Second Auxiliary Request,

all requests filed with the statement of grounds of appeal.

The Respondent (Opponent) requested that the appeal be dismissed.

XIII. The arguments of the Appellant of relevance here, i.e. regarding compliance of the pending claim requests with Article 123(2) EPC, can be summarised as follows.

In its statement setting out the grounds of appeal (page 5, last paragraph), the Appellant argued that it was irrelevant whether or not the application as filed expressly disclosed that the HWS carboxylate or carboxylic acid containing compound might be constituted by an A/MA copolymer. Such copolymers, by their nature, were HWS. Simply associating the reference to the HWS characteristic with the A/MA copolymers could thus not result in added matter.

In its letter of 11 June 2015 (page 3, second to sixth paragraphs), the Appellant stressed further in relation to feature K that A/MA copolymers useful in detergents were usually HWS. Thus, the definition of these copolymers in claim 1 of the Main Request found basis in the application as filed, which disclosed that HWS carboxylate compounds were preferred, and that the A/MA copolymers were suitable examples of such materials. Moreover, even the worked examples utilised A/MA copolymer.

Thus, the insertion of feature K did not add subject-matter and claim 1 of the Main Request met the requirement of Article 123(2) EPC.

XIV. The Respondent's counter-arguments in this respect can be summarised as follows.

Features K and I had to be considered in combination in assessing whether amended claim 1 (all requests) complied with Article 123(2) EPC .

In particular, the wording used in claim 1 (all

requests), i.e. the way in which claim 1 referred to features I and K implied that the A/MA copolymer may be the sole builder present in "*intimate mixture*" with one or more surfactant(s).

The application as filed, on the contrary, only described the polymeric polycarboxylic acids and polycarboxylates (i.e. the class of carboxylate- or carboxylic acid-containing compounds to which also the A/MA copolymers belonged) as less preferred "*water-soluble builders*" (herein below **WS builders**), possibly present in the detergent compositions of the invention in addition to other, more preferred builders.

Hence, already for this reason none of the pending versions of claim 1 met the requirements of Article 123(2) EPC.

Reasons for the Decision

1. Admissibility of the appeal

The Board is satisfied that the appeal meets the requirements of Article 108 and Rule 99 EPC and is, thus admissible for the reasons already indicated in the communication issued in preparation for the oral proceedings.

2. Admittance of the pending claim Requests into the proceedings

2.1 The Appellant filed the pending sets of claims with its grounds of appeal to overcome the objections under Article 123(2) EPC that had been raised for the first

time in the oral hearing before the Opposition Division.

- 2.2 However, since none of these requests meets the requirements of the EPC for the reasons given *infra*, the issue of their admissibility into the proceedings under Article 12(4) RPBA does not have to be further addressed.
3. Main Request - Non-compliance with Article 123(2) EPC
- 3.1 Claim 1 - Meaning of the terms
- 3.1.1 Claim 1 at issue defines a solid detergent composition characterised, *inter alia*, by features I and K (see wording under V, *supra*).
- 3.1.2 Whereas feature I of claim 1 requires the presence, in the composition claimed, of "a" HWS carboxylate- or carboxylic acid-containing compound in "*intimate mixture*" with surfactant(s), the subsequent feature K defines "the" HWS carboxylate- or carboxylic acid-containing compound as being the A/MA copolymer component.
- 3.1.3 The Board holds that due to the use of the definite article in feature K, this feature is undoubtedly to be understood as referring to the same "*carboxylate- or carboxylic acid-containing compound*" which is mentioned in the preceding feature I.
- 3.1.4 Consequently, and since according to the wording of claim 1 the "*HWS carboxylate- or carboxylic acid-containing compound*" is the sole ingredient that is required to be in "*intimate mixture*" with surfactant(s), the combination of the two features I

and K in the context of claim 1 implies that the A/MA copolymer may actually be the only ingredient of the claimed detergent composition present in "*intimate mixture*" with surfactant(s).

3.1.5 The Appellant did not present arguments explicitly or implicitly in contradiction with this interpretation of the combination of features I and K.

3.1.6 Disclosure in the application as filed

The Board identified the following passages of the application as filed, possibly of relevance in the assessment of whether claim 1, insofar as relating to a composition with the combined features I and K, actually finds basis in the application as filed:

(a) In the description (page 4, third paragraph, to page 10, last paragraph) it is specified that the detergent composition of the invention may comprise WS builders such as carboxylate- or carboxylic acid-containing compounds of different kinds, including polymeric compounds such as polymeric polycarboxylic acids, their salts and polymeric polycarboxylates (page 5, lines 16 to 27). Herein below the expression **polymeric WS builders** is used to generally refer to these polymeric carboxylate- or carboxylic acid-containing builder compounds.

(b) In the only passage of the application as filed explicitly mentioning "*copolymers of (poly)acrylate and maleic acid or anhydride*" (page 7, third paragraph) these copolymers are described as examples of the polymeric WS builders.

- (c) However, in preceding passages of the description (page 5, line 17, to page 7, line 3) the polymeric WS builders are mentioned as being optionally present in the composition in addition to other, preferred WS builders, i.e. monomeric carboxylate- or carboxylic acid-containing compounds (page 5, line 16, to page 6, line 24) including, among the most preferred ones, the salts of citric acid.
- (d) According to page 7, lines 18 to 21, the (not further defined) WS builders may preferably be present in "*intimate mixture with a surfactant*". The presence in such "*intimate mixture*" of (not further defined) HWS carboxylate- or carboxylic acid-containing compounds is then stated to be particularly advantageous (page 7, lines 23 to 27).
- (e) The presence of polymeric WS builders in an "*intimate mixture*" (presumably also containing surfactants) is only mentioned on page 10, lines 5 to 9, where "*polymeric compounds such as acrylic and/or maleic acid polymers*" are described as one type of the "*other materials*" possibly present in (the) "*intimate mixture*" in addition to other builders such as, *inter alia*, a (not further defined) "*highly water-soluble builder*". At the end of page 10 it is then indicated that if polymeric WS builder is present, then it is preferably comprised in "*intimate mixture*" with other detergent ingredients, preferably after having been pre-mixed with "*sodium carbonate*" in a spray-dried particle.
- (f) The subsequent section of the description devoted to the optional further component "*Organic Polymer*", where polymeric carboxylate- or

carboxylic acid-containing compounds are mentioned, exemplified by "*polyacrylates ... and their copolymers with maleic anhydride*" (page 43, third paragraph), does not disclose any "*intimate mixture*" thereof with surfactant(s).

(g) In the examples of the application, the polymeric WS builders (i.e. the "*Copolymer of Acrylic/Maleic Acid*" or the "*MA/AA or AA*" mentioned in the ingredient list on the "*Blown powder*" at the top of page 58 and on page 60, Examples "A" and "B", respectively are only described as components (inherently in intimate mixture with surfactant) of particulates also containing the most preferred monomeric WS builder "*Sodium citrate*".

3.1.7 From the above analysis, it is apparent that the application as filed only discloses the polymeric WS builders (and, thus, also the A/MA copolymers) as less preferred WS builders constituting only a part of the whole/total WS builder ingredient, and being present in "*intimate mixture*" with surfactant(s) only when such "*intimate mixture*" also contains further (more preferred) builders.

3.2 Added subject-matter

3.2.1 Since the combination of feature I and K in claim 1 can imply a composition comprising the A/MA copolymer as the sole component present in "*intimate mixture*" with surfactant(s) (see 3.1.4, *supra*), this claim is directed *inter alia* to subject-matter extending beyond the relevant content of the application as filed (identified under 3.1.7, *supra*).

3.2.2 In the Board's judgement, claim 1 at issue does not, therefore, meet the requirements of Article 123(2) EPC either.

First and Second Auxiliary Requests - Non-compliance with Article 123(2) EPC

4. The respective versions of claim 1 according to the First and Second Auxiliary Requests also comprise both features I and K and likewise encompass compositions comprising the A/MA copolymer as the sole component present in "*intimate mixture*" with surfactant(s).

4.1 The other amendments made to claim 1 have no bearing on this particular finding. Hence, the reasoning given with regard to claim 1 of the Main Request applies *mutatis mutandis* to claim 1 of the First Auxiliary Request and claim 1 of the Second Auxiliary Request as well.

4.2 Accordingly, the Board concludes that claim 1 of the First Auxiliary Request and claim 1 of the Second Auxiliary Request do not meet the requirements of Article 123(2) EPC either.

Conclusion

5. None of the Appellant's claim requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



D. Magliano

B. Czech

Decision electronically authenticated