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**Datasheet for the decision
of 16 May 2018**

Case Number: T 0888/14 - 3.4.02

Application Number: 07857197.3

Publication Number: 2086848

IPC: B65D5/42, C11D17/04

Language of the proceedings: EN

Title of invention:
FABRIC WHITENESS GUIDE

Patent Proprietor:
Unilever PLC
Unilever N.V.

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

Relevant legal provisions:
EPC 1973 Art. 56
RPBA Art. 13(1)

Keyword:
Inventive step (main and sixth auxiliary requests: no)
Admissibility of requests (remaining auxiliary requests: no)

Decisions cited:

T 0619/02



Beschwerdekammern

Boards of Appeal

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Case Number: T 0888/14 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 16 May 2018

Appellant: The Procter & Gamble Company
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 14 February
2014 rejecting the opposition filed against
European patent No. 2086848 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman R. Bekkering
Members: F. J. Narganes-Quijano
 B. Müller

Summary of Facts and Submissions

- I. Opponent 2 lodged an appeal against the decision of the opposition division rejecting the oppositions filed by opponent 1 and by opponent 2 against European patent No. 2 086 848.

The patent proprietors also lodged an appeal against the mentioned decision of the opposition division.

The oppositions filed by opponent 1 and by opponent 2 against the patent as a whole were based on the grounds for opposition of

- exclusion from patentability of the subject-matter of independent claims 1 and 13 under Article 100(a) EPC, together with Article 52(2) EPC,
- insufficiency of disclosure of the invention defined in independent claims 1 and 13 (Article 100(b) EPC), and
- lack of novelty and of inventive step of the subject-matter of claims 1 to 18 (Article 100(a), together with Articles 52(1), 54(1) and 56 EPC).

- II. In its decision the opposition division held with regard to the patent as granted that
- the subject-matter of independent claims 1 and 13 was not excluded from patentability under Article 52(2) EPC,
 - the claimed invention was sufficiently disclosed within the meaning of Article 100(b) EPC, and
 - the subject-matter of independent claims 1, 13 and 14 was new and involved an inventive step with regard to the prior art cited during the opposition proceedings, and in particular with regard to the following documents:

D6: DE 94 16 671 U1
D10: WO 01 32097 A1.

III. In a communication annexed to summons to oral proceedings the board gave a preliminary assessment of the case.

In reply to the summons to oral proceedings before the board,

- the patent proprietors submitted with their letter dated 15 April 2018 sets of claims amended according to auxiliary requests 1 to 8,
- opponent 1 announced that it would not attend the oral proceedings, and
- opponent 2 maintained the requests formulated in its statement of grounds of appeal that the decision under appeal be set aside and the patent be revoked, and announced that it would not be represented at the oral proceedings.

No substantive submission was made by opponent 1 during the appeal proceedings.

IV. Oral proceedings were held on 16 May 2018 before the board in the absence of opponent 1 and opponent 2.

The patent proprietors withdrew their appeal.

The patent proprietors requested that the appeal of opponent 2 be dismissed and the patent be maintained as granted (main request), or that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims of auxiliary requests 1 to 8 filed with the letter of 15 April 2018.

At the end of the oral proceedings the chairman announced the decision of the board.

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

"A fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter."

Claim 1 of auxiliary request 1 reads as follows:

"A fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter wherein the undulations are such that the shape has multiple 2-dimensional protrusion [sic]."

Claim 1 of auxiliary request 2 reads as follows:

"A fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter wherein the whiteness scale(s) has maximum whiteness defined by:

L^*_{\max} is in the range 85-100
 a^*_{\max} is in the range -3 to +5
 b^*_{\max} is in the range +5 to -15, according to CIE LA8 [sic] colour space, CIE 1976 $L^*a^*b^*$, as herein defined."

Claim 1 of auxiliary request 3 reads as follows:

"A fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter wherein the whiteness scale has minimum whiteness L^*_{min} , a^*_{min} , b^*_{min} such that

$\Delta L^* = L^*_{max} - L^*_{min}$ where ΔL^* is 3 to 20 units,
 $\Delta a^* = a^*_{max} - a^*_{min}$ where Δa^* is +/- 0 to 5 units,
 $\Delta b^* = b^*_{max} - b^*_{min}$ where Δb^* is -3 to -15 units,
according to CIE LAB colour space, CIE 1976 $L^*a^*b^*$, as herein defined."

Claim 1 of auxiliary request 4 reads as follows:

"A fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter wherein the whiteness scale(s) has maximum whiteness defined by:

L^*_{max} is in the range 85-100
 a^*_{max} is in the range -3 to +5
 b^*_{max} is in the range +5 to -15, according to CIE LA8 [sic] colour space, CIE 1976 $L^*a^*b^*$, as herein defined

and wherein the whiteness scale has minimum whiteness L^*_{min} , a^*_{min} , b^*_{min} such that

$\Delta L^* = L^*_{max} - L^*_{min}$ where ΔL^* is 3 to 20 units,
 $\Delta a^* = a^*_{max} - a^*_{min}$ where Δa^* is +/- 0 to 5 units,
 $\Delta b^* = b^*_{max} - b^*_{min}$ where Δb^* is -3 to -15 units,
according to CIE LAB colour space, CIE 1976 $L^*a^*b^*$, as herein defined."

Claim 1 of auxiliary request 5 reads as follows:

"A fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter wherein the undulations are such that the shape has multiple 2-dimensional [*sic*] protrusions and wherein the whiteness scale(s) has maximum whiteness defined by:

L^*_{max} is in the range 85-100

a^*_{max} is in the range -3 to +5

b^*_{max} is in the range +5 to -15, according to CIE LA8 [*sic*] colour space, CIE 1976 $L^*a^*b^*$, as herein defined

and wherein the whiteness scale has minimum whiteness L^*_{min} , a^*_{min} , b^*_{min} such that

$\Delta L^* = L^*_{max} - L^*_{min}$ where ΔL^* is 3 to 20 units,

$\Delta a^* = a^*_{max} - a^*_{min}$ where Δa^* is +/- 0 to 5 units,

$\Delta b^* = b^*_{max} - b^*_{min}$ where Δb^* is -3 to -15 units,

according to CIE LAB colour space, CIE 1976 $L^*a^*b^*$, as herein defined."

Claim 1 of auxiliary request 6 reads as follows:

"A method of consumer-measuring and/or monitoring of the whiteness of a fabric, the method including the step of comparing the fabric with a scale of whiteness, wherein the fabric is compared with a fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter."

Claim 1 of auxiliary request 7 reads as follows:

"A method of consumer-measuring and/or monitoring of the whiteness of a fabric, the method including the step of comparing the fabric with a scale of whiteness, wherein the fabric is compared with a fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter, wherein the undulations are such that the shape has multiple 2-dimentional [*sic*] protrusions."

Claim 1 of auxiliary request 8 reads as follows:

"A method of consumer-measuring and/or monitoring of the whiteness of a fabric, the method including the step of comparing the fabric with a scale of whiteness, wherein the fabric is compared with a fabric whiteness guide comprising at least one visual scale of whiteness, characterised in that the guide includes apertures corresponding with the scale, said apertures having an undulating perimeter, wherein the undulations are such that the shape has multiple 2-dimentional [*sic*] protrusions and wherein the whiteness scale(s) has maximum whiteness defined by:

L^*_{\max} is in the range 85-100
 a^*_{\max} is in the range -3 to +5
 b^*_{\max} is in the range +5 to -15, according to CIE LA8 [*sic*] colour space, CIE 1976 $L^*a^*b^*$, as herein defined

and wherein the whiteness scale has minimum whiteness L^*_{\min} , a^*_{\min} , b^*_{\min} such that

$\Delta L^* = L^*_{\max} - L^*_{\min}$ where ΔL^* is 3 to 20 units,
 $\Delta a^* = a^*_{\max} - a^*_{\min}$ where Δa^* is +/- 0 to 5 units,
 $\Delta b^* = b^*_{\max} - b^*_{\min}$ where Δb^* is -3 to -15 units,
according to CIE LAB colour space, CIE 1976 $L^*a^*b^*$, as
herein defined."

Reasons for the Decision

1. The appeal of opponent 2 is admissible.

The patent proprietors withdrew their appeal during the oral proceedings before the board. In these circumstances, the patent proprietors have the status of respondents, and opponent 1 the status of party as of right, in the appeal proceedings initiated by opponent 2 (Article 107 EPC 1973, second sentence).

2. *Main request - Claim 1 - Novelty and inventive step*

- 2.1 In its decision the opposition division concluded that the subject-matter of claim 1 was new over the prior art cited by opponent 1 and opponent 2, and in particular over document D6.

- 2.1.1 Document D6 discloses a fabric colour guide (guide 4 in Fig. 2, see page 3 of the description, second paragraph) comprising a set of visual colour patterns (colour patterns in Fig. 2) for comparing the patterns with dyed fabrics (page 3, second paragraph). In addition, each of the colour patterns of the guide includes an aperture (apertures 3 in Fig. 2, see page 2, lines 8 to 11, and claim 3) for allowing a better

comparison of the colour of the patterns with the colour of the dyed fabrics when the fabrics are held under the colour patterns (page 3, second paragraph).

The subject-matter of claim 1 as granted differs from the fabric colour guide disclosed in document D6 in that:

- the set of visual colour patterns of the fabric colour guide is formed as a visual scale of whiteness, so that the fabric colour guide constitutes a fabric whiteness guide, and
- the apertures have an undulating perimeter.

Therefore, the subject-matter of claim 1 as granted is new over the disclosure of document D6 (Article 54(1) EPC 1973).

During the appeal proceedings opponent 2 has submitted that according to paragraph [0044] of the description of the patent the undulating perimeter of the apertures had only an aesthetic effect and that for this reason this feature was not technical and should be disregarded in the assessment of novelty. In the board's view, however, the question of whether this feature has a technical effect or, on the contrary, has only an aesthetic effect as submitted by opponent 2, involves an analysis of the possible effects of the claimed feature in the context of the claimed invention, and this question pertains, by its very nature, to the assessment of inventive step (see point 2.2 below). In any case, the claimed subject-matter is already new over document D6 at least by virtue of the distinguishing feature relating to the visual scale of whiteness.

2.1.2 In addition, the board concurs with the opposition division's view that the subject-matter of claim 1 is also new over the remaining documents of the prior art considered during the opposition proceedings (see point 5 of the decision under appeal).

2.2 As submitted by opponent 2, a skilled person addressing the problem of in-home consumer monitoring of whiteness in fabrics will be aware of numerous guides for assessing colour contrast such as the fabric colour guide disclosed in document D6. In view of these considerations and of the disclosure of document D6 (see point 2.1.1 above), document D6 qualifies in the board's opinion as the closest state of the art.

The patent proprietors have contested this view and have submitted that the skilled person would not turn to document D6 as a starting point for addressing the original problem considered in the patent, i.e. to provide a device for in-home consumer monitoring of the changes in whiteness of a fabric and evaluation of the whiteness benefits of a laundry composition (paragraph [0008] of the patent specification). In addition, according to the patent proprietors, document D6 was only concerned with the identification of the colour of a fabric with respect to the colours of a limited number of colour patterns, in particular of nine in the case of the colour guide represented in Fig. 3, and the colour guide of this document would not be suitable for a whiteness scale, let alone for the assessment of very small changes of whiteness.

The board, however, does not find these submissions to be persuasive. Claim 1 is generally directed to a fabric whiteness guide comprising a visual scale of whiteness, and the possible use of the whiteness guide

in the specific context of monitoring changes in whiteness, and in particular for the purpose of evaluating the whiteness benefits of a laundry composition, is not reflected by the claimed subject-matter. In addition, Fig. 3 of document D6 only constitutes a schematic representation of a fabric colour guide constituted by 3 x 3 colour patterns, and the document discloses that the number of colour patterns in a colour guide is, in practice, considerably higher (sentence bridging pages 2 and 3 of the description); therefore, the skilled person would construe the colour guide disclosed in document D6 as comprising a large number of colour patterns and therefore as a colour scale that allows the assessment of predetermined colours close to each other.

As a consequence, the board sees no reason for discarding document D6 as representing the closest state of the art.

- 2.2.1 The distinguishing feature of claim 1 relating to the set of visual colour patterns of the fabric colour guide of document D6 being formed as a visual scale of whiteness in such a way that the fabric colour guide constitutes a fabric whiteness guide (see point 2.1.1 above) has the technical effect of allowing monitoring the whiteness of a fabric. The patent proprietors' submissions that the technical effect achieved by this distinguishing feature was more specific, namely to allow monitoring changes in whiteness of a fabric, in particular for the purpose of evaluating the whiteness benefits of a laundry composition, is, as already noted in point 2.2 above, penultimate paragraph, not supported by the claimed subject-matter.

Therefore, the objective problem solved by the distinguishing feature under consideration can be seen in enabling the monitoring of the whiteness of a fabric with the fabric colour guide of document D6.

It is, however, well known in the art to select different white colours as the colours of a colour guide when the object which colour is to be monitored is white in order to assess the whiteness of the object, see for instance document D10 which discloses a tooth shade guide with a scale of varying shades of white for monitoring the whiteness of the teeth (Fig. 1, page 2, lines 6 to 8, and page 3, lines 9 to 14). It is therefore obvious for the person skilled in the art to select the colours of the visual colour patterns of the fabric colour guide of document D6 as different white colours in order to allow monitoring the whiteness of a fabric when circumstances make it desirable.

2.2.2 As regards the claimed feature relating to the undulating perimeter of the apertures, the board first notes that according to paragraph [0044] of the patent specification the undulating shape of the perimeter of the apertures constitutes one of "Visually interesting shapes [...] provide visual stimulæ for the consumer, to attract the consumer to do the testing and also providing visual stimulæ during testing". The mere fact of providing visual stimulæ to attract the consumer to do the testing, or providing during testing unspecified visual stimulæ, does not, however, constitute a technical effect.

The patent proprietors have submitted that, in addition to the effects specified in the patent specification and referred to above, the undulating perimeter also

has the technical effect of increasing the perimeter of the aperture and therefore of increasing the extent of side-by-side comparison between the fabric and the scale of whiteness, thus improving the degree of accuracy in the comparison of different grades of whiteness and in the assessment of very subtle changes of whiteness in the fabric. Opponent 2 has contested this view and submitted that the actual effect might also run in the opposite direction.

The board notes that the claimed subject-matter is silent as to the specific shape and dimensions of the undulating perimeter. Even though claim 1 may encompass arrangements with specific undulating perimeters that improve the accuracy in the comparison between the whiteness of the fabric and the scale of whiteness, claim 1 also encompasses arrangements with undulating perimeters (for instance, with a perimeter profile comprising a big number of relatively small, elongated undulations close to each other) that would blur a proper comparison, and between these two groups of arrangements also arrangements with undulating perimeters without a specific technical effect on the accuracy of the comparison. The further submission of the patent proprietors that the claimed subject-matter would, in its specific context, not be construed by the skilled person as including undulating perimeters without an improved effect on the comparison is not convincing because, as noted above, the only effect of the undulating perimeter mentioned in the patent specification is purely aesthetic and there is no disclosure that would lead the skilled reader to exclude undulating perimeters without a particular technical effect, and in particular without an improved performance in the comparison.

In view of these considerations, no technical effect can be identified as being achieved by the claimed feature relating to the undulating diameter, at least not to the extent of being achieved by essentially all the embodiments encompassed by the claimed subject-matter. According to the established case law, a claimed feature that has no technical effect in the context of the claimed subject-matter cannot be considered to contribute to inventive step within the meaning of Article 56 EPC 1973, irrespectively of whether or not the feature itself may be qualified as being technical (see, for instance, decision T 619/02 (OJ EPO 2007, 63), point 4.2.2 of the reasons, and the decisions cited therein).

The board concludes that in the absence of a clear technical effect supported by the claimed subject-matter, the feature relating to the undulating perimeter of the apertures does not contribute to inventive step.

- 2.2.3 The patent proprietors have also submitted that there is a synergetic effect between the claimed features relating to the visual scale of whiteness and the undulating perimeter, especially as document D6 only concerns the identification of the colour of a fabric with respect to the colours of a limited number of colour patterns, in particular of nine in the case of the colour guide represented in Fig. 3.

However, as already noted in the penultimate paragraph of point 2.2 above, the colour guide of document D3 comprises in practice a considerable number of colour patterns and at least some of the colour patterns would have colours close to each other. In view of this and of the considerations in point 2.2.2 above, the

arguments of the patent proprietors in support of a synergetic effect between the undulating perimeter of the apertures and the whiteness scale are not persuasive.

2.2.4 In view of the above considerations, the board concludes that the subject-matter of claim 1 of the patent as granted does not involve an inventive step (Article 56 EPC 1973).

3. *Auxiliary requests 1 to 8*

Auxiliary requests 1 to 8 were submitted by the patent proprietors in reply to the preliminary opinion of the board expressed in the communication annexed to the summons to oral proceedings.

Opponent 2 submitted that these auxiliary requests had been filed without being accompanied by arguments as to why they resulted in the claimed invention meeting the requirements for patentability, and that for these reasons the auxiliary requests should not be admitted into the proceedings pursuant to Article 13 RPBA.

3.1 Auxiliary requests 1 to 5 - Admissibility

Claim 1 of auxiliary requests 1 to 5 results from the combination of claim 1 as granted with dependent claim 2 as granted, with dependent claim 3 as granted, with dependent claim 4 as granted, with dependent claims 3 and 4 as granted, and with dependent claims 2 to 4 as granted, respectively.

During the oral proceedings the board noted that none of the features incorporated in claim 1 of each of these requests and based on dependent claims as granted

had been addressed during the appeal proceedings, and that the letter accompanying the requests contained no substantive submission on the technical significance of these features, in particular on the possible relevance of the same for the issue of inventive step. The board considered that in these circumstances the admissibility of each of the requests depended on the question of whether the corresponding amendments would *prima facie* overcome the objection of lack of inventive step of the subject-matter of claim 1 of the main request. As noted by the board during the oral proceedings, one of the relevant criteria for admitting amendments after arrangement of oral proceedings under Article 13 RPBA is that it must be immediately apparent to the board, with little investigative effort on its part, that the amendments made successfully address the issue raised without giving rise to new ones (see "Case Law of the Boards of Appeal" EPO, 8th edition 2016, section IV.E.4.2.5, and decisions cited therein).

- 3.1.1 The feature incorporated in claim 1 of auxiliary request 1 requires that the undulations of the undulating perimeter "are such that the shape has multiple 2-dimensional protrusion [*sic*]". During the oral proceedings the patent proprietors submitted that this feature was introduced in reaction to the ground for opposition under Article 100(b) EPC 1973 and declined to comment on its technical significance for the issue of inventive step.

In the absence of arguments in support of inventive step, and in particular in the absence of a clarification as to the actual limiting effect of the feature "multiple 2-dimensional protrusion[s]" over the feature "undulating perimeter" already present in claim 1 as granted, the board does not see in which respect

the feature introduced in claim 1 could have an impact on the reasons given in point 2.2 above for the lack of inventive step of the subject-matter of claim 1 of the main request. Therefore, the amendments in claim 1 of auxiliary request 1 do not *prima facie* overcome the objection of lack of inventive step of the subject-matter of claim 1 of the main request and for this reason the board, exercising its discretion, decides not to admit auxiliary request 1 into the proceedings (Article 13 (1) RPBA).

- 3.1.2 The feature incorporated in claim 1 of auxiliary request 2 requires that the whiteness scale has a maximum whiteness satisfying the relationships defined in the claim in terms of the parameters L^* , a^* and b^* of the CIE LAB colour space (CIE 1976), and the feature incorporated in claim 1 of auxiliary request 3 requires that the maximum white and the minimum white of the whiteness scale satisfy the relationships defined in the claim in terms of the parameters L^* , a^* and b^* . During the oral proceedings the patent proprietors submitted that the additional features of claim 1 of each of auxiliary request 2 and 3 were relevant in the determination of the whiteness of the fabric.

In the CIE LAB colour space the coordinates of the optimal white (maximum lightness and optimal whiteness) has values of $L^* = 100$ and $a^* = b^* = 0$ (see patent specification, paragraphs [0012] and [0013]), and the conditions defined in claim 1 of auxiliary request 2 merely express that the highest white present in the whiteness scale should at least be relatively close to the optimal white within the range defined in the claim (patent specification, paragraph [0014]). It is, however, obvious to select the optimal white or a white relatively close to it as the highest white of a

whiteness scale. For this reason, the board does not see in which respect the feature introduced in claim 1 of auxiliary request 2 adds anything inventive so as to overcome the objection of lack of inventive step raised in point 2.2 above in respect of claim 1 of the main request.

The conditions of claim 1 of auxiliary request 3 merely express that the different whites in the whiteness scale are within a range of whites running between the highest and the lowest white of the whiteness scale, the range of whites having the width defined in the claim and the lowest white being slightly "yellowish" when compared to the highest white (see claimed condition " Δb^* is -3 to -15 units", and paragraph [0015] of the patent specification). It is, however, obvious to select in a whiteness scale an appropriate range of whites delimited by the highest and the lowest of the whites in the range depending on the specific characteristics of the fabrics to be evaluated, and in particular on the specific range of whiteness (width of whiteness, deviations in whiteness coloration, etc.) of the fabrics. For this reason, the board does not see in which respect the feature introduced in claim 1 of auxiliary request 3 could overcome the objection of lack of inventive step raised in point 2.2 above in respect of claim 1 of the main request.

Therefore, the amendments in claim 1 of both auxiliary requests 2 and 3 do not *prima facie* overcome the objection of lack of inventive step of the subject-matter of claim 1 of the main request and for this reason the board, exercising its discretion, decides not to admit auxiliary requests 2 and 3 into the proceedings (Article 13 (1) RPBA).

3.1.3 The features incorporated in claim 1 of auxiliary request 4 are the same as those incorporated in claim 1 of auxiliary requests 2 and 3, and the features incorporated in claim 1 of auxiliary request 5 are the same as those incorporated in claim 1 of auxiliary requests 1, 2 and 3.

The patent proprietors submitted during the oral proceedings that each of these two combinations of features provided the variations in whiteness in the scale required for the specific purpose of monitoring changes in whiteness in clothing after laundry.

However, the subject-matter of claim 1 of auxiliary requests 4 and 5 is generally directed to a fabric whiteness guide, and not to the use of the same in a specific context, let alone in the context of laundry and of the possible effects induced by the same on the whiteness of fabrics. In addition, in the context of document D6 the skilled person would also have to select the appropriate colours of the colour guide in accordance with the specific colours of the fabrics to be evaluated, and no selection invention can be seen in the mere selection of different white colours running between a relatively optimal white and a lower white, and in particular a lower white with a yellowish colour when compared to the relatively optimal white.

In view of these considerations and of those already presented in points 3.1.1 and 3.1.2 above, the board considers that the amendments in claim 1 of both auxiliary requests 4 and 5 do not *prima facie* overcome the objection of lack of inventive step of the subject-matter of claim 1 of the main request. For this reason the board, exercising its discretion, decides not to

admit auxiliary requests 4 and 5 into the proceedings (Article 13 (1) RPBA).

3.2 Auxiliary request 6 - Admissibility and inventive step

3.2.1 Claim 1 of auxiliary request 6 results from independent claim 13 as granted, which contained a reference to the scale of whiteness defined in claim 1 as granted, and the subsequent incorporation into the claim of the text of claim 1 as granted occasioned by the deletion of claim 1 as granted.

Since auxiliary request 6 consists essentially in the deletion of claims as granted and the patentability of the resulting claim 1 was already addressed during the first-instance proceedings in the form of independent claim 13 as granted, the board decides to admit auxiliary request 6 into the proceedings (Article 13 RPBA).

3.2.2 Claim 1 of auxiliary request 6 is directed to a method of consumer-measuring and/or monitoring of the whiteness of a fabric using the fabric whiteness scale defined in claim 1 as granted, i.e. in claim 1 of the main request.

The fabric colour guide of document D6 (see point 2.1.1 above) is used for measuring or monitoring the colour of a fabric by comparison of the fabric with the visual colour patterns of the colour guide (document D6, page 1, first paragraph, page 2, second paragraph, and page 3, last paragraph). It follows that the method defined in claim 1 of auxiliary request 6 differs from the method disclosed in document D6 in the same features distinguishing the fabric whiteness guide of claim 1 of the main request from the fabric colour guide of

document D6 and listed in point 2.1.1 above. Therefore, claim 1 of auxiliary request 6 is new over the disclosure of document D6.

However, the board is of the opinion that the features distinguishing the method of claim 1 of auxiliary request 6 from the method disclosed in document D6 and referred to above do not involve an inventive step (Article 56 EPC 1973) for the same reasons as those given in point 2.2 in respect of claim 1 of the main request.

3.3 Auxiliary requests 7 and 8 - Admissibility

Claim 1 of auxiliary request 7 results from the incorporation in claim 1 of auxiliary request 6 of the features of dependent claim 2 as granted, and claim 1 of auxiliary request 8 results from the incorporation in claim 1 of auxiliary request 6 of the features of dependent claims 2, 3 and 4 as granted.

Since, as concluded in point 3.2.2 above, claim 1 of auxiliary request 6 *prima facie* does not involve an inventive step and, as already set forth in points 3.1.1 and 3.1.3 above in respect of auxiliary requests 1 and 5, respectively, the features of dependent claim 2 as granted and the combination of the features of dependent claims 2, 3 and 4 as granted *prima facie* do not add anything inventive, the board concludes that the same conclusion applies to the subject-matter of claim 1 of auxiliary requests 7 and 8. For these reasons, the board, exercising its discretion, decides not to admit auxiliary requests 7 and 8 into the proceedings (Article 13 (1) RPBA).

4. The board concludes that claim 1 of the patent as granted and claim 1 of auxiliary request 6 do not involve an inventive step, and that auxiliary requests 1 to 5, 7 and 8 are not admitted into the appeal proceedings. In the absence of an allowable request, the patent is to be revoked.

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:



M. Kiehl

R. Bekkering

Decision electronically authenticated