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Datasheet for the decision of 13 December 2017

Case Number: T 2051/14 - 3.3.06

Application Number: 08804759.2

Publication Number: 2201093

IPC: C11D17/06, C11D3/40, C11D3/50, C11D17/02, C11D3/37, C11D1/14, C11D1/29

Language of the proceedings: EN

Title of invention:
LAUNDRY DETERGENT WITH PRETREATMENT ADDITIVE AND ITS USE

Patent Proprietor:
Unilever PLC and Unilever N.V.

Opponent:
The Procter & Gamble Company

Headword:
Lamellar Visual Cues - Unilever

Relevant legal provisions:
EPC Art. 87, 56

Keyword:
Priority - same invention (yes)
Inventive step - (yes)

Decisions cited:
G 0002/98

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 2051/14 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 13 December 2017

Appellant: (Opponent)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnatti, Ohio 45202 (US)
Representative:	Gill Jennings & Every LLP The Broadgate Tower 20 Primrose Street London EC2A 2ES (GB)
Respondent: (Patent Proprietor	Unilever PLC Unilever House 100 Victoria Embankment London EC4Y 0DY (GB) Unilever N.V. Weena 455 3013 AL Rotterdam (NL)
Representative:	McHugh, Paul Edward Unilever Patent Group Unilever Colworth Sharnbrook Bedford MK44 1LQ (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 31 July 2014 rejecting the opposition filed against European patent No. 2201093 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	B. Czech
Members:	M. Maremonti
	C. Heath

Summary of Facts and Submissions

I. The appeal by the Opponent lies from the decision of the Opposition Division to reject the opposition against the European Patent No. 2 201 093.

II. The patent was granted with a set of 11 claims, independent claim 1 reading as follows:

"*A granular laundry detergent composition comprising 0.1 to 10 wt% soluble coloured lamellar visual cues made from a soluble film, each soluble coloured lamellar visual cue having a planar cross-sectional area of from 5 mm^2 to 100 mm^2, the relative density of the film being from 0.2 to 0.8 kg/l and the film comprising 10 to 90 wt% surfactant, water soluble polymer and non-fabric-substantive colorants.*".

Claims 2 to 10 are dependent on claim 1 and define specific embodiments of the composition of claim 1. Claim 11 defines a method of using said composition.

III. The items of evidence cited during the opposition procedure included the following documents:

P1: Patent application IN 2035/MUM/2007, filing date 12 October 2007;

D1: GB 2 358 403 A;

D2: WO 2009/047125 A1;

D3: Patent application IN 2034/MUM/2007 filed on 12 October 2007;

D5: WO 2006/079416 A1;

D6: US 4,762,636 A; and

D9: WO 03/18738 A1.

IV. The Opposition Division came *inter alia* to the following conclusions:

- The priority date of P1 (12 October 2007) was not valid.
- Consequently, document D2 belonged to the state of the art to be considered under Article 54(3) EPC. The subject-matter of claim 1 of the patent in suit was, however, novel over document D2.
- The subject-matter of claim 1 as granted also involved an inventive step in view of D1 taken as the closest prior art.

V. In its statement of grounds, the Appellant (Opponent) maintained that the priority of P1 (12 October 2007) was not validly claimed and that the subject-matter of claim 1 lacked novelty over D2. It further submitted that the composition of claim 1 was obvious in view of D1, taken as the closest prior art. In this connection it invoked common general knowledge and combinations of D1 with prior art documents D1, D5, D6 and D9, relying also on the following newly filed items of evidence

D10: Frequently Asked Questions about Ivory Bar Soap, 2014, Procter & Gamble; http://ivorysoap.tumblr.com/faq; two pages printed on 10 December 2014; and

D11: Article entitled "99.44% Pure Luck" on http://www.snopes.com/business/origins/ivory.asp, last updated on 19 May 2011, two pages printed on 8 December 2014.

VI. In its reply to the statement of grounds, the Respondent (Patent Proprietor) rebutted the inventive

step objection of the Appellant and defended the patent as granted.

VII. In a further letter, the Appellant reacted to the Patent Proprietor's comments and extended its argumentation regarding lack of inventive step to the subject-matter of method claim 11 as granted.

VIII. The parties were summoned to oral proceedings. In preparation therefor, the Board issued a communication stating its preliminary opinion on some of the salient issues of the case.

IX. The Respondent reacted by filing a further amended set of claims.

X. The Appellant also reacted to the Board's communication by means of a further letter in which it complemented its argumentation regarding inventive step, referring additionally to document

D12: US 4,176,079 A, cited in the patent in suit.

XI. Oral proceedings before the Board were held on 13 December 2017. The debate focused on the interpretation of claim 1 of the patent as granted, the validity of the claimed priority and the issue of inventive step over D1 as closest prior art.

XII. Final Requests

The Appellant requested that the decision under appeal be set aside and that the patent be revoked.

The Respondent requested that the appeal be dismissed. Should this not be possible, it requests the patent in suit to be maintained on the basis of the claims

according to its auxiliary request filed on 30 November 2017.

XIII. The Appellant's arguments of relevance for the present decision can be summarised as follows.

- The subject-matter of claim 1 as granted was not entitled to the priority date of 12 October 2007 since the feature "*lamellar visual cues*" with a "*planar cross-sectional area of from 5 mm^2 to 100 mm^2*" was not directly and unambiguously disclosed in the priority document P1.

- Document D2 was thus prior art to be considered under Article 54(3) EPC. Since it disclosed compositions with all features of claim 1, the subject-matter of the latter lacked novelty.

- The subject-matter of claim 1 was obvious in view of D1 taken as the closest prior art, taken alone or in combination with common general knowledge and/or the cited prior art D5, D6, D9, D10 , D11 and D12.

XIV. The Respondent essentially counter-argued as follows:

- The priority date of 12 October 2007 was validly claimed since the subject-matter of claim 1 was directly and unambiguously disclosed in the priority document P1.

- Hence, document D2 did not belong to the state of the art to be considered under Article 54(3) EPC. Consequently, the claimed subject-matter was novel.

- Starting from D1 as the closest prior art, the subject-matter of claim 1 solved the problem of allowing a consumer to scoop the visual cues from

the washing liquor and pretreat therewith a stained area, as described in paragraph [0017] of the patent in suit. The solution provided in claim 1 as granted was not suggested by the cited prior art. The claimed subject-matter thus involved an inventive step.

Reasons for the Decision

Claim 1 - Meaning of the terms

1. Claim 1 at issue requires (see II, *supra*) the detergent composition to comprise "*lamellar visual cues made from a soluble film*" and having "*a planar cross-sectional area of from 5 mm^2 to 100 mm^2*". It further requires "*the relative density of the film being from 0.2 to 0.8 kg/1*".

2. As regards the meaning to be given to these features, the Appellant submitted the following:

2.1 Claim 1 did not impose any particular limitation as regards the structure of the "*lamellar visual cues ... made from a soluble film*". The cues were not limited to those consisting of pieces of flat film, as confirmed by paragraph [0064] of the patent, referring to cues in the shape of three dimensional structures, e.g. "*larger bubbles made from two sheets of film laminated together around their edges*", or "*other more complex configuration*".

2.2 Moreover, such cues did not necessarily float on water, since the density requirement of claim 1 only applied to the film but not to the visual cue as a whole, which could, according to paragraph [0064], comprise "*cavities ... filled with other ingredients*".

2.3 Furthermore, claim 1 was silent on the dissolution speed of the visual cues, as compared to the other components of the laundry detergent composition. Claim 1 did not even exclude cues which dissolved instantly or at least very rapidly in the wash water.

3. Not all of these arguments convince the Board.

3.1 The Board holds that in view of the express definitions given in the description of the patent as regards the terminology used in claim 1, the "*lamellar visual cues ... made from a soluble film*" must be understood as being single-layer "*film particles*".

3.1.1 Indeed, in the section entitled "DEFINITIONS" (column 2), the following is stated (paragraph [0014]):

"*Lamellar Visual Cue (or Lamellae) ... [m]eans visual cue particles in the form of* ***planar*** *film material made into shapes. The shapes may be cut from a sheet of film or may be cast directly [...] Such lamellae are also called '****film particles****'*" (emphasis by the Board).

Preferred "*planar film shapes (or lamellae)*" have "*the outline of the shape of a flower with petals*" (see paragraph [0015]).

3.1.2 Therefore, as expressly confirmed by the Respondent during the oral proceedings, embodiments as described in paragraph [0064] of the patent (see 2.1, *supra*) do not fall within the ambit of granted claim 1.

3.1.3 Moreover, it was common ground at the oral proceedings that, adopting this understanding of the expression "*lamellar visual cues made from a soluble film*", the "*planar cross-sectional area*" referred to in claim 1 could only be understood to designate the extension of the particles in the plane of the film (area of the

particle in top view).

3.2 Furthermore, given the Board's reading of the expression "*lamellar visual cues*", the latter cues as defined in claim 1 (single-layer, film particles) will necessarily tend to float on water upon initial contact due to the lower film density as specified in claim 1.

3.3 However, the Board accepts that the dissolution speed of the cues in water used for hand washing the laundry is not even implicitly defined in claim 1. Hence, claim 1 does indeed not exclude embodiments, wherein the visual cues dissolve or disintegrate very rapidly when contacted with the wash liquor, whereby it would not be possible to scoop them from the surface of the water and use them for pre-treating stained areas of the laundry.

Validity of the priority claimed

4. The Appellant argued that a composition comprising "*lamellar visual cues ... having a* ***planar cross-sectional area*** *of from 5 mm^2 to 100 mm^2*" as required according to claim 1 of the contested patent was not directly and unambiguously disclosed in the priority document P1.

Indeed, the term *"planar cross-sectional area*" meant the area of a cross-section parallel with the upper surface of the lamellar visual cue, i.e. in the plane of the film that formed the lamellar visual cue.

4.1 P1 merely disclosed, e.g. on page 14, first paragraph, that each "visual cue film particle has a cross sectional area of between 5 mm^2 and 100 mm^2", but without specifically referring, unlike claim 1 at issue, to the **planar** cross-section of the film

particles.

4.2 As a matter of fact, the size of the "*cross sectional area*" of a film particle may vary depending on the angle at which a notional plane cuts though the film particle (from perpendicular to the plane of the film to parallel to the plane of the film).

4.3 According to P1, any of these cross-sectional areas could be in the range 5 mm^2 to 100 mm^2, whereas according to the patent in suit, it had to be specifically the "*planar*" cross-sectional area that fell within that range.

4.4 Furthermore, P1 did not specify any upper limit for the length and width of the visual cue, as apparent from page 13 under the heading "b) Size and shape of the visual cue film particle". The specified range of from 5 mm^2 to 100 mm^2 thus also made sense when considering a cross-section defined by the height x the length or the height x the width of the visual cue, the height being the thickness of the film. In fact, if a skilled person were to interpret the wording of P1, the most obvious interpretation would be the cross-sectional area of a plane cutting the visual cue at right angles to its longest axis. This also corresponded to the dictionary definition of the term "cross-section".

4.5 Additionally, the mentioned range of from 5 mm^2 to 100 mm^2 also made sense in view of the embodiment disclosed in P1 on page 15, first paragraph, also under said heading "b) Size and shape of the visual cue film particle". The "three dimensional" "larger bubbles" referred to could easily have cross sections around 100 mm^2. In this respect, the Appellant noted that a paragraph corresponding to paragraph [0014] of the patent in suit, strictly defining the lamellar visual

cues as being in the form of "*planar film material*" was not present in P1. Therefore, the visual cues of P1 could also be three dimensional bubbles as mentioned on page 15 of this document.

5. These arguments do not convince the Board for the following reasons.

5.1 Claim 1 at issue requires the detergent composition to comprise "*lamellar visual cues made from a soluble film*" and having "*a planar cross-sectional area of from 5 mm^2 to 100 mm^2*". As set out under 3.1, *supra*, this wording is to be understood in the sense that the visual cues are single-layer film particles. The "*planar cross-sectional area*" mentioned in claim 1 therefore must refer to the area of the top view of the film particle (see 3.1.4, *supra*).

5.2 In accordance with Article 87 EPC, a European patent is only entitled to priority in respect of "the same invention" as was disclosed in the indicated priority document, i.e. the person skilled in the art must be able to derive the subject-matter of the claim at issue directly and unambiguously, using common general knowledge, from the previous application as a whole (G2/98, OJ 2001, 413, Conclusion).

5.3 In the present case, it has thus to be decided whether lamellar visual cues having a "*planar cross-sectional area of from 5 mm^2 to 100 mm^2*" (within the meaning indicated under 3.1, *supra*) can be derived directly and unambiguously from document P1, despite the fact that this feature is not mentioned *verbatim* therein. Actually, P1 only mentions the "cross-sectional area" of the visual cues. The term "*planar*" is not mentioned.

5.4 In this connection, a first question to be answered is

whether or not the term "*planar*" as used in claim 1 of the patent in suit actually implies some additional information in the context of the claim under consideration.

As a matter of fact, any object, and thus also a visual cue, has a plurality of cross-section areas, corresponding to planes cutting the object in different directions. It is acknowledged that the section created by a plane cutting an object perpendicularly is the most common one, but is definitely not the only one. Each of the so generated cross-sectional areas lies in the corresponding plane cutting through the object. Each cross-sectional area can thus be considered as being planar by definition. Therefore, the Board holds that the term "*planar*" implies no further clear limitation of the expression "*cross sectional area*" as used in claim 1 of the patent.

5.5 P1 (page 4, Section labelled "Summary of the Invention") discloses that the detergent composition comprises "**lamellar** visual cues made from a soluble **film**, wherein the visual cues have a cross-sectional area of less than 100 mm^2, and preferably more than 5 mm^2" (emphasis by the Board). From this particular passage, it is clear that the entire numerical range must at least apply to lamellar visual cues "made from a film", i.e. particles made from a single film layer. For such single-layer film cues, the Board considers that the only technically sensible meaning to be given to the term "*cross-sectional area*" is that it designates the area of the top view of the visual cue.

5.6 This interpretation is corroborated by the values of the dimensions of the film cues as specified on page 13, last paragraph of P1. According to that, the film

particle size in two dimensions is preferably at least 3 mm, more preferably at least 4 mm. The thickness of the film particle is said to be at most 1 mm, most preferably 0.2 mm.

Taking the maximum possible thickness of 1 mm taught by P1, a perpendicular cross-sectional area of 100 mm^2 (upper limit taught by P1) would correspond to a width or length of the visual cue particle of 10 cm. Taking then the most preferred thickness of 0.2 mm, the corresponding length or width would even be 50 cm!

Such values do obviously not make any sense in the technical field of granular detergents, in which the size of the granules ranges from 0.1 to 2 mm (P1: page 13, penultimate paragraph).

Therefore, considering the dimensional values indicated on pages 13 and 14 of P1, the only technically sensible interpretation of the term "cross sectional area" as used therein is, insofar as lamellar single-layer film visual cues are concerned, that the top view area must be meant, i.e. the extension of the visual cue in the plane of the film.

5.7 This conclusion is also in line with the only example mentioned in P1 on page 18. This example reports a visual cue in floret shape with a thickness of 0.2 mm and a maximum diameter of 5 mm in the other two dimensions. By taking the perpendicular cross-section, one would obtain an area of 1 mm^2, i.e. an area clearly falling outside the range of 5 to 100 mm^2 as taught by P1. On the other hand, a circle of diameter 5 mm yields a planar area of 19.6 mm^2, which, even taking into account the floret form well falls within the mentioned range.

5.8 The fact that the range of cross-sectional area values as disclosed in P1 may, as submitted by the Appellant, also apply to the embodiments of visual cues having three dimensional shapes as referred to on page 15 of P1, has no bearing on the above finding that lamellar visual cues having a top view area within the mentioned range are directly and unambiguously disclosed in P1.

5.9 Hence, in the Board's judgement the patent in suit validly claims the priority from P1.

Novelty

6. Novelty was only disputed in view of document D2. It was, however, common ground between the parties that provided the priority date claimed by the patent from P1 was valid, document D2, claiming priority from an(other) application (document D3) also filed on 12 October 2007, was not even part of the state of the art pursuant to Article 54(3) EPC.

7. In view of above finding regarding the validity of the priority claimed by the patent, the Board concludes that the claims at issue are not objectionable for lack of novelty (Articles 52(1) and 54 EPC).

Inventive Step

8. The invention

8.1 The invention concerns granular laundry detergent compositions containing pretreatment additives for intensive treatment of fabric during washing and to a method for using said compositions in the hand washing of laundry (patent in suit, paragraph [0001], claims 1 and 11).

8.2 According to the patent in suit (see [0008]), "*stains*

are difficult to remove during a standard wash and the consumer needs to pre-treat stains by application of a composition to the localised area of the stain. This either requires purchasing several products, which is expensive and a hassle for the consumer, or the consumer uses more powder, which is wasteful".

One of the purposes underlying the invention is (see [0011]) "*to make a visual cue that persists long enough to give the desired indication to the user and yet dissolves well enough not to be a concern to the user, especially at low temperatures and under hand wash conditions*".

According to paragraph [0017], "*the inclusion of surfactant in the visual cue provides cleaning functionality. The low relative density and colour further provides a functional visual cue, which is clearly visible during the early stages of a hand wash due to its size and colour, and the fact that it floats*".

9. Closest prior art

9.1 It is common ground between the parties that document D1 represents the closest prior art. Considering the similarities between the patent in suit and D1 in terms of issues addressed and detergent compositions disclosed, the Board has no reason to take a different stance in this respect.

9.2 Indeed, D1 discloses (page 1, lines 6 to 7; page 2, line 11, to page 3, line 21; page 4, lines 17 to 19; examples 8 and 9) powder laundry detergent compositions, comprising 0.02 to 1 wt% soluble coloured visually contrasting cues ("bodies"), preferably "lamellae ... of ... water-soluble plastic film". More

particularly, these visual cues may be in the shape of "circular lamellae (petals)" having a diameter of 0.5 cm (see examples 4 and 5), and, thus, a "*planar cross-sectional area*" (within the meaning of claim 1 under consideration; see 3.1.4, *supra*) of about 20 mm^2, i.e. falling within the range of "*from 5 to 100 mm^2*" prescribed by claim 1 under consideration.

This is not in dispute.

9.3 More particularly, the detergent compositions described in examples 8 and 9 of D1 represent the most suitable starting point for the assessment of inventive step.

10. Technical problem solved according to the Appellant

10.1 At the oral proceedings, the Appellant maintained that in the light of the closest prior art as disclosed in D1, the technical problem consisted merely in the provision of a granular laundry detergent composition comprising lamellar visual cues made from film having a different composition and providing increased cleaning functionality.

10.2 In this respect, the Appellant argued that claim 1 at issue was too broad, since it encompassed compositions which did not provide the advantages referred to in paragraph [0017] of the contested patent, namely to allow the user to scoop up the visual cues from the surface of the wash liquor and to use them to pre-treat a stained area. In particular, nothing could be inferred from claim 1 as regards the dissolution speed of the visual cues and the possible duartion of their buoyancy. It could thus not be derived from claim 1 that the cues would remain solid and float long enough to actually allow a user to grasp them from the surface of the wash liquor.

10.3 Considering that claim 1 also encompasses compositions which do not, in use, offer this possibility (see point 3.3, *supra*) the Board accepts, at least *arguendo*, the formulation of the technical problem proposed by the Appellant (10.1, *supra*).

11. Solution

As a solution to this technical problem, the patent in suit proposes the "*granular laundry detergent composition*" comprising "*lamellar visual cues made from a soluble film*" according to claim 1, which is characterised in particular by

"*the relative density of the film being from 0.2 to 0.8 kg/l and the film comprising 10 to 90 wt% surfactant.*"

12. Success of the claimed solution

It is plausible and not disputed that compositions according to claim 1 effectively solve the technical problem identified under 10.1, *supra*. Indeed, additionally incorporating surfactant into the visual cues of D1/examples 8 and 9 will increase the cleaning functionality of the composition.

13. Non-obviousness of the solution

13.1 What remains to be decided is whether or not, having regard to the state of the art and common general knowledge, it was obvious to the skilled person seeking to solve the technical problem posed (10.1, *supra*) to modify the composition of D1/examples 8 and 9 by using as visual cues particles of a film material as defined in claim 1 at issue, i.e having a "*relative density ... of from 0.2 to 0.8 kg/l*" and "*comprising 10 to 90 wt% surfactant*".

13.2 Document D1 taken alone

13.2.1 As pointed out in writing by the Appellant, D1 expressly suggests that the cues may "contain detergent functional ingredients".

13.2.2 On the one hand the Board notes, however, that the lamellae contained in the compositions according to D1/ examples 8 and 9 do not contain a detergent functional ingredient, let alone a surfactant. Moreover, there is absolutely no reason to assume that the film material used might have a density of 0.8 kg/l or less.

On the other hand D1 (page 4, lines 8 to 9, examples 1 to 3) does disclose embodiments of "visually contrasting bodies" containing surfactant components (cf. examples 1 to 3), but these are of a very different type, namely in the form of "coloured tablet- or pastille-shaped bodies", made from compressed detergent ingredients including the surfactant component.

13.2.3 The Board therefore concludes that nothing in D1 induces the skilled person to replace the visual cues contained in the compositions of D1/examples 8 and 9 by film particles meeting the criteria of claim 1 at issue concerning relative density and surfactant content.

13.3 Combination of D1 with D9 or D6

13.3.1 At the oral proceedings, the Appellant essentially argued that the claimed subject-matter was obvious in the light of each of documents D9 and D6, which suggested the incorporation, into detergent compositions, of visual cues floating on the wash liquor and comprising surfactants.

13.3.2 D9 disclosed (e.g. page 2 to page 4, claim 1) a

detergent powder, comprising coloured visual cues having a bulk density of 600 g/l at most, in order for them to float readily on the surface of water. Moreover, examples 1 and 2 on pages 16 to 17 disclosed that the visual cues comprised sodium LAS, i.e. a well known surfactant.

13.3.3 The person skilled in the art seeking to solve the posed technical problem would thus be motivated by the teaching of D9 to modify the composition of D1 and use a film having a density of 600 g/l at most and also comprising a surfactant.

13.3.4 A similar reasoning applied as regards the combination of D1 with D6, a document also disclosing granular detergent compositions comprising visual cues floating on water and comprising surfactants (claims 1 and 20; column 1, lines 17 to 23, column 2, lines 16 to 44 and column 3, lines 31 to 39; examples).

13.3.5 The Appellant acknowledged that the visual cues known from D9 and D6 were not made from a water soluble film but of granules of spray-dried detergent base powder. However, it also argued that "aerated" polymer films of low relative density were well known, as apparent from the reference to D12 in paragraph [0006] of the patent. Hence, there was no technical difficulty deterring the person skilled in the art from applying the teaching of D9 and D6 (using visual cues of low relative density) also to the film particles of the closest prior art.

13.3.6 These arguments do not convince the Board for the following reasons.

13.3.7 Both documents D9 and D6 disclose detergent compositions comprising visual cues in the form of granules made by spray-drying a detergent base powder

(D9: examples 1 and 2 on pages 16 to 17; D6: examples 1 and 2 and claim 1). According to both documents, said granules float on the surface of the wash liquor in order to provide an attractive coloration and to deliver a functional ingredient, in particular a photobleach into the water in a more controlled manner, so that it reaches the substrate (laundry) "in homogeneous concentration" (D6: column 3, lines 32-37), i.e. "with little or no staining" (D9: page 2, last paragraph). The granules disclosed in D9 and D6 have, respectively, an average particle size up to 0.7 mm (D9: examples 1 and 2, page 17, penultimate line) and an average diameter of up to 1 mm (D6: column 3, lines 20-25).

13.3.8 The granules of D9 and D6 represent therefore so called "speckles", i.e. visual cues differing substantially from the lamellar film particles of D1 and having, in particular, a significantly smaller size. For the Board, it is thus more than questionable whether the person skilled in the art would actually have consulted these documents at all when seeking a solution to the posed technical problem (10.1, *supra*).

13.3.9 But even assuming that the person skilled in the art would have consulted D9 or D6, and excluding *a posteriori* considerations, the Board holds that he/she would essentially have been prompted to follow the teaching of these documents by either

- adding speckles of the type described in D9/D6 to the laundry detergent composition of D1; or
- replacing the lamellar visual cues of D1 with such speckles of D9/D6.

13.3.10 Hence, the Board concludes the person skilled in the

art was not induced by D9 and/or D6 to modify the compositions of D1 in a manner leading to a composition according to claim 1 at issue.

13.4 Other evidence invoked by the Appellant

For the following reasons, also none of the other items of evidence and arguments, invoked by the Appellant in writing only, convinces the Board that the person skilled in the art seeking to solve the technical problem posed had some motivation to modify the composition of D1 such as to arrive to subject-matter falling within the ambit of claim 1.

13.4.1 The allegation of the Appellant that water-soluble polymer films having low relative densities as prescribed by claim 1 were well known to the person skilled in the art and, hence, part of the common general knowledge is not corroborated by the evidence on file. Document D12, cited in this respect by the Appellant during the written procedure only, is referred to as prior art in the patent in suit (paragraph [0006]), but in rather vague terms, *viz*. as allegedly disclosing particles, cut from an "aerated" water soluble polymer film comprising enzymes and surfactant, these particles then being incorporated into a detergent powder. D12 is a published patent application and can thus hardly be considered as being representative of common general knowledge. Moreover, although D12 mentions "foaming" of the film-forming mixture before extrusion or casting the film (col 16, lines 41 46), this document is silent about the specific relative densities of the film particles.

13.4.2 Referring also to D10 and D11, the Appellant argued that the idea of floating soap bars was known since the late 1800s.

The Board notes that floating soap bars do not pertain to the same or a similar technical field as granular detergents including visual cues. Therefore, the Board has no doubts that the person skilled in the art seeking to solve the technical problem posed (10.1, *supra*) would not have been induced by such soap bars to reduce the relative density of the visual cues of D1 to make them floatable.

13.4.3 The Appellant also referred to D5. Document D5 relates to detergent compositions including "lamellar body additives" as visual cues, which may comprise surface active agents (page 1, lines 1 to 3; and page 3, lines 16 to 22). In D5 the visual cues of D1 are, however, qualified as being "unsuitable for a number of reasons" (D5: page 2, lines 10 to 14). The lamellar body additives of D5 have particle diameters in the range of from 0.5 to 1.4 mm (D5: page 4, lines 20 to 23; page 7, lines 4-9), i.e. they are significantly smaller than the cues of D1. Moreover, D5 does not mention the density of the film from which they are made, but no measure appears to be taken to obtain a film with a a relative density as low as 0.8 kg/l or less.

A replacement of the visual cues of D1 with the body additives of D5 would thus not also not result in subject-matter falling within the ambit of claim 1 at issue.

14. Based on the above considerations, the Board concludes that the subject-matter of claim 1 as granted and of claims 2 to 10 dependent thereon, involves an inventive step (Articles 52(1) and 56 EPC). Consequently, the subject-matter of independent method claim 11, directed

to the use of this inventive subject-matter likewise involves an inventive step.

Conclusion

None of the grounds invoked by the Appellant prejudices the maintenance of the patent as granted.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano B. Czech

Decision electronically authenticated