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**Datasheet for the decision
of 27 September 2018**

Case Number: T 2319/15 - 3.3.06

Application Number: 07104506.6

Publication Number: 1975226

IPC: C11D3/22, C11D3/37, C11D3/42

Language of the proceedings: EN

Title of invention:
Liquid treatment composition

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Henkel AG & Co. KGaA

Headword:
Liquid treatment composition/P&G

Relevant legal provisions:
EPC Art. 52(1), 54, 56, 123(2)
RPBA Art. 13(3)

Keyword:

Amendment to the patent specification occasioned by a ground for opposition (yes) - late-filed request (admitted) -
Amendment allowable (yes) - new page 2 of the patent specification
Extension of the subject-matter of Claim 1 as granted beyond the content of the application as originally filed (no)
Sufficiency of disclosure - (yes) - Main Request
Novelty - (yes) - Main Request
Inventive step - (yes) - non-obvious alternative - Main Request

Decisions cited:

Catchword:



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Case Number: T 2319/15 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 27 September 2018

Appellant: Henkel AG & Co. KGaA
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 28 October 2015
rejecting the opposition filed against European
patent No. 1975226 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman L. Li Voti
Members: G. Santavicca
C. Heath

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Opposition Division rejecting the opposition filed against European patent No. 1 975 226.
- II. Independent Claims 1 and 13 of the patent as granted respectively read as follows:

"1. A liquid treatment composition suitable for the treatment of fabrics comprising a deposition aid selected from copolymers comprising:

a) a cationic monomer selected from a group consisting N,N-dialkylaminoalkyl methacrylate, N,N-dialkylaminoalkyl acrylate, N,N-dialkylaminoalkyl acrylamide, N,N-dialkylaminoalkylmethacrylamide, their quaternized derivatives, vinylamine and its derivatives, allylamine and its derivatives, vinyl imidazole, quaternized vinyl imidazole and diallyl dialkyl ammonium chloride,

b) and a second monomer selected from a group consisting of acrylamide (AM), N,N-dialkyl acrylamide, methacrylamide, N,N-dialkylmethacrylamide, C1-C12 alkyl acrylate, C1-C12 hydroxyalkyl acrylate, C1-C12 hydroxyetheralkyl acrylate, C1-C12 alkyl methacrylate, C1-C12 hydroxyalkyl methacrylate, vinyl acetate, vinyl alcohol, vinyl formamide, vinyl acetamide, vinyl alkyl ether, vinyl butyrate and derivatives and mixtures thereof,

and a fabric hueing dye wherein the hueing dye is selected from the group consisting of an alkoxyated triphenylmethane polymeric colorant; an alkoxyated thiophene polymeric colorant; a triarylmethane blue basic dye; a triarylmethane

violet basic dye; a methine blue basic dye; a methine violet basic dye; an anthraquinone blue basic dye; an anthraquinone violet basic dye; an azo dye basic blue 16, basic blue 65, basic blue 66, basic blue 67, basic blue 71, basic blue 159, basic violet 19, basic violet 35, basic violet 38, or basic violet 48; oxazine dye basic blue 3, basic blue 75, basic blue 95, basic blue 122, basic blue 124, basic blue 141, or Nile blue A; a xanthene dye basic violet 10; an alkoxyated anthraquinone polymeric colorant; or a mixture thereof,

the liquid treatment composition further comprises a deterative enzyme selected from protease, amylase, lipase, cellulase, carbohydrase, and mixtures thereof."

"13. Use of a hueing dye to improve the perception of cleanliness of a fabric laundered with a composition according to claim 1, comprising a deposition aid and a deterative enzyme."

Dependent Claims 2-12 concern specific embodiments of the liquid treatment composition according to Claim 1.

III. The opposition had been filed against the patent in suit as a whole, on the grounds of lack of novelty and inventive step (Article 100(a) EPC), insufficiency of the disclosure (Article 100(b) EPC) and added subject-matter (Article 100(c) EPC).

The following items of evidence were *inter alia* relied upon:

D1: US 2006/0217288;

D2: US 2005/0288207;

D3: US 2005/0288206;

D6: WO 2005/054419; and

D11: Technical Report, filed with letter of
7 August 2015.

- IV. In the decision under appeal, the Opposition Division *inter alia* came to the following conclusions:
- Technical Report D11 was admitted into the proceedings.
 - The ground of opposition under Article 100(c) EPC did not prejudice maintenance of the patent as granted.
 - The claimed invention was sufficiently disclosed.
 - The claimed subject-matter was novel over D1 and involved an inventive step, starting from D6 as closest prior art.
- V. With its statement setting out the grounds of appeal the Appellant (Opponent) contested the findings of the Opposition Division and maintained all of the objections raised before the first instance. As regards sufficiency of disclosure, it however generically referred to its arguments put forward during opposition proceedings.
- VI. With its response to the statement, the Respondent (Patent Proprietor) contested all of the Appellant's objections/arguments.
- VII. In a communication in preparation for oral proceedings, the Board indicated its preliminary opinion, *inter alia*, that it had no reason to depart from the decision of the Opposition Division as regards sufficiency of the disclosure, compliance with the requirements of Article 123(2) EPC and novelty of the claimed subject-matter. Moreover, as regards inventive step it remarked that the skilled person
- starting from the known liquid compositions of D6,
 - faced with the technical problem solved, and

- considering the particular disclosure of each of D2 and D3 in respect of the use of hueing dyes,
- would not have obviously replaced the fluorescent whitening agents disclosed by D6 with a known hueing dye as disclosed in any of D2 and D3, because there did not appear to be any suggestion nor a motivation in this direction.

VIII. By letter of 27 August 2018 the Appellant maintained all of its objections and extended them to the claimed subject-matter of all auxiliary requests. As regards the alleged insufficiency of the disclosure it did not add any further argument.

IX. Oral proceedings took place on 27 September 2018. As regards the alleged insufficiency and lack of novelty, the Appellant relied on its written submission thereon. In reaction to the debate on added subject-matter, the Respondent filed a hand amended page 2 of the patent specification, the amended paragraph [0007] of which was identical to the corresponding paragraph in the application as filed. The alleged lack of inventive step was argued on the basis of D6, taken as the closest prior art, in combination with any of D2 or D3.

X. The Appellant (Opponent) requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

XI. The Respondent (Patent Proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the following basis:

- Claims as granted;
- Description: amended page 2 of the patent specification filed during oral proceedings and pages 3-29 of the patent specification as granted.

XII. The arguments of the Appellant of relevance for the present decision can be summarised as follows:

As to insufficiency, reference was made to the written submission in the opposition proceedings, according to which the disclosure was insufficient because:

- Claims 2 and 3 concerned desiderata, the obtention of which was not sufficiently disclosed in the patent, and
- the composition of Claim 1 was not sufficiently disclosed, because the application as filed did not disclose that the cationic cellulose ethers were not to be combined with the deterative enzymes.

As regards the ground of added subject-matter, the skilled person, reading the application as filed, did not gather that the enzymes mentioned in original dependent Claim 18 were meant to be only the deterative enzymes, nor that the use of the combination of a hueing agent with a deterative enzyme in a composition comprising a deposition aid provided a particular improvement in the perception of cleanliness.

Therefore, as regards both claim 1 as granted and the amended paragraph [0007] of the patent specification, the content of the original application had been extended.

Concerning lack of novelty, D1 mentioned all of the features of Claim 1 within a disclosure having an identical structure as that of the original application of the patent in suit. Hence, the combination of features of Claim 1 at issue was disclosed by D1.

Finally, as concerns lack of inventive step, D6 was to be taken as the closest state of the art, in so far as it addressed the same objectives of the patent in suit,

such as good cleaning performance, improved softness/care and improving cleaning perception (e.g. reduction of yellowing). The closest embodiment was disclosed by Example 4 (Formulation 8 in Table 8) of D6, which was to be read in the light of Claim 4 of D6, according to which the replacement of the cationic cellulose or guar polymer used in Example 8 with a cationic polymer as claimed was an obvious substitution of analogous polymers. Considering that Test Report D11 neither concerned D6 nor showed that an improvement could be achieved across the whole breadth of Claim 1 as granted, and that D6 solved the same problem of the patent in suit, the technical problem only consisted in the provision of an alternative composition for cleaning and softening/care of fabrics. The solution to this problem was, admittedly, not obvious from D6 itself, but was obvious over D6 and D2 or D3. The skilled person would have considered D2 or D3 to supplement the teaching of D6 towards the provision of an alternative composition, because D2/D3 addressed the reduction of the yellowing of the fabrics by the use of particular hueing agents included in laundry compositions, which additionally could include fabric care components. Thus, for the skilled person, the replacement of the fluorescent whitening agent used in Example 4 of D6 with a hueing agent as disclosed by D2 or D3, or even the addition of such a hueing agent into the composition of Example 4 of D6 was an obvious measure.

XIII. The arguments of the Respondent of relevance for the present decision can be summarised as follows:

The claimed subject-matter was sufficiently disclosed, as acknowledged in the decision under appeal.

No addition of subject-matter resulted from the combination of features defined in Claim 1 as granted. The use of the deterative enzymes was seriously contemplated throughout the original application, as also apparent from the examples of the patent in suit. The objection against paragraph [0007] no longer applied since its wording had been brought into agreement with the original disclosure.

In D1 there was no direct and unambiguous disclosure of all the features of Claim 1 in combination, so that its subject-matter was new.

Concerning inventive step, even if the technical problem over D6 taken as the closest prior art were the provision of an alternative laundry softening/care composition, the claimed composition was not obvious over the combined teaching of D6 and D2/D3. This teaching was retrospective and would not lead the skilled person towards the claimed solution, because D6 concerned improved cleanliness obtained from compositions comprising a polymeric cationic deposition aid, and was self exhaustive as regards its alternatives (e.g. customary brighteners were preferred), whilst neither D2 nor D3 concerned compositions comprising a cationic polymer as deposition aid. The unspecified fabric care components, or the mentioned cationic surfactants of D2 or D3, were not equivalent to the claimed cationic polymers.

Reasons for the Decision

Procedural matters - new request filed at the oral proceedings

1. The amendment in paragraph [0007] of the patent specification was made in reaction to a new objection under the ground of opposition of Article 100(c) EPC raised by the Appellant at the oral proceedings, held to be *prima facie* relevant by the Board, thus to be admitted. The Respondent did not contest the objection and offered the amendment then made. The Board, considering the principle of the parity of arms and the fact that the amendment made clearly overcame the objection raised without raising further issues, exercised its discretion and decided to admit the amendment to the patent specification into the proceedings (Article 13(3) RPBA).

Main Request

Alleged extension beyond the content of the application as originally filed (Article 100(c) EPC)

2. According to the decision under appeal this ground of opposition does not prejudice the maintenance of the patent as granted.
 - 2.1 The Board, after the amendment to paragraph [0007] of the patent specification as granted, does not see any reason to deviate from the decision under appeal in respect of the subject-matter of Claim 1 as granted, because:
 - 2.1.1 Claim 1 as granted is fairly based on original Claims 1 (composition comprising deposition aid and fabric hueing dye), 3 (definition of - the monomers forming - the deposition aid copolymers, other than the cationic cellulose ethers), 7 to 11 (list of hueing agents -

classes) and 18 (preferred co-presence of *inter alia* enzymes), apart from

- the exclusion of the option "cationic cellulose ethers" defined in original Claim 3, not incorporated in Claim 1 at issue; and
- the specification of the list of suitable enzymes disclosed on page 43, lines 13-14.

2.1.2 As regards the combination of all these features in Claim 1, the Board in particular notes that:

(1) Original Claims 3, 7 to 11 and 18 all refer back to any preceding claim, thus in particular to Claim 1 as originally filed, hence their combination with Claim 1 was originally sought-for.

(2) The exclusion of one of the options as defined in original Claim 3, i.e. "cationic cellulose ethers", does not modify the original generic definition of the remaining co-polymers, thus does not amount to a non-disclosed selection or singling out, in so far as the claimed composition still includes one of the co-polymer options as originally disclosed, in combination with Claim 1.

(3) Original Claim 18 also refers back to original Claim 3, thus generally mentions the presence of "enzymes" in a composition including the now claimed deposition aid cationic polymer.

The now claimed "*deterstive enzymes*" are disclosed as preferred embodiment on page 43, lines 12-22, of the application as filed, which deals with the general disclosure of the invention and is thus of general applicability. Hence, in this respect, the objected limitation is merely a concretization of the original

generic disclosure "enzymes" to a preferred embodiment thereof.

(4) The limitation to "deterasive enzymes" is not arbitrary since:

- only all of optional deterasive enzymes have been concretized in granted Claim 1, as originally disclosed on original page 43, lines 13-14, the entire passage of the description also disclosing explicitly (lines 21-22) that "*the present invention includes...enzyme- (i.e. deterasive enzymes) containing...embodiments*";
- the further optional enzymes mentioned in other parts of the application as filed are instead not deterasive. This applies to both the "bleaching enzymes", dealt with on page 47, line 22, under "bleach system", and to "catalase", dealt with (on page 51, lines 19-20) under "effervescent system comprising hydrogen peroxide and catalase" as one of the possible other adjuncts;
- Claim 1 does not define/require any particular effect of the composition, apart from being "*suitable for the treatment of fabrics*", so that the concretization of the enzymes as "*deterasive enzymes*" is not linked to any improvement whatsoever disclosed originally. On the other hand, it has not been argued, let alone shown, that the defined deterasive enzymes of Claim 1 are not suitable for the treatment of fabrics, nor that this unsuitability was disclosed in the application as originally filed;
- therefore, the original description clearly suggests the optional inclusion of the deterasive enzymes to any embodiment covered by Claim 1.

(5) The non-inclusion of the feature "including mannanase and endoglucanase", mentioned on page 43, line 14, of the application as filed, as being included into the enzyme class carbohydrase, does not pose any

problem, in so far mannanase and endoglucanase belong to the carbohydrase class.

- 2.2 Therefore, as already indicated in its communication sent in advance of the oral proceedings, the Board concludes that Claim 1 complies with the requirements of Article 123(2) EPC.
- 2.3 The further claims as granted have not been attacked. Thus, the Board need not make any decision on them.
- 2.4 No objection was raised against the amended page 2 of the patent specification filed during oral proceedings.
- 2.5 Consequently, the ground of opposition under Article 100(c) EPC does not prejudice maintenance of the patent in the version requested by the Respondent.

Alleged insufficiency of the disclosure (Article 100(b))

- 3. The ground of opposition of insufficiency of the disclosure was dealt with in the decision under appeal, and was found not to prejudice the maintenance of the patent as granted. In particular, it was held that the skilled person could reproduce the composition according to Claim 1 and could determine the preferred properties defined in Claims 2 and 3 without undue burden.
 - 3.1 The Appellant merely referred to its case presented before the Opposition Division, without providing any reasons why the decision under appeal was wrong in respect of this issue.
 - 3.2 The Board thus sees no reason to deviate from the findings of the Opposition Division regarding

sufficiency of the disclosure as detailed in the decision under appeal, *a fortiori* if it were also considered that the Appellant/Opponent has not provided any evidence in support of its allegations.

- 3.3 Hence, for the Board, the ground of opposition under Article 100(b) EPC does not prejudice maintenance of the patent in suit as granted.

Alleged lack of novelty

4. For lack of novelty to be proven it is necessary to show a direct, or at least implicit, but unambiguous disclosure of all of the features of the claim at issue in combination, which as such can be gathered by the skilled person reading the disclosure.

- 4.1 In its statement and its letter dated 27 August 2018 the Appellant backed up its objection of lack of novelty with the general structure of the disclosure of D1, allegedly being identical with that of the application as filed, on which the opposed patent was granted with the combination of features of Claim 1 at issue. However, the Appellant has not indicated any particular claim, example or passage of D1 allegedly disclosing the composition of Claim 1 at issue as such.

- 4.2 In this respect, the Board notes the following:

- 4.2.1 D1 does not contain any claim concerning the specific deposition aid and hueing agents of Claim 1 at issue. Therefore, the general structure of the disclosure of D1 is not identical with that of the application as filed, on which the opposed patent was granted.

- 4.2.2 Only Examples VIII, X and XI of D1 disclose as

deposition aid a copolymer of dimethyl amino methacrylate and methacrylate ester, labelled Alcozum L-520 (see also paragraph [0201] of D1, footnote 13), however in combination with Liquitint Blue Dye (this dye is not mentioned in paragraph [0162] of D1, generally describing the dyes for hueing and the brighteners, but in paragraph [0150], dealing with dyes for colouring the composition). In any case, none of the said examples of D1 contains an enzyme as claimed.

- 4.2.3 As found in the decision under appeal (point 6) unrelated optional embodiments taken from the description of D1 have to be mosaically combined in order to arrive at a composition according to Claim 1 at issue. Therefore, also the description does not contain a direct and unambiguous disclosure of a composition according to Claim 1 at issue.
- 4.3 It follows from the foregoing that the Board has no reason to deviate from the decision under appeal in respect of novelty.
- 4.4 Consequently, the ground of opposition under Article 100(a) EPC (lack of novelty) does not prejudice maintenance of the patent as granted.

Alleged lack of inventive step

The invention

5. The invention concerns liquid compositions comprising a deposition aid and a fabric hueing agent (paragraph [0001]).
In particular, the invention addresses the problem that the presence of a deposition aid, though providing an improvement in fabric care, is accompanied by a

negative effect on cleaning performance, which is noticeable to the consumer and is not acceptable (paragraph [0003], last three sentences).

The closest prior art

6. In the decision under appeal, document D6 was considered to disclose the closest prior art. The Appellant and the Respondent still consider D6 as the best starting point. Considering that the objective/problem addressed by D6 (e.g. page 2, last paragraph, first sentence; paragraph bridging pages 24 and 25) is similar to that mentioned in the patent in suit (paragraph [0004]), the Board has no reason to take a different stance on this issue.

The technical problem

7. The Board need not pursue the issue whether the claimed subject-matter provides an improvement in terms of perceived cleanliness and softness/care over D6 (e.g. in view of D11), in so far as the claimed subject-matter is not obvious over the disclosure of D6, taken alone, or in combination with any of invoked D2 or D3, as detailed *infra*, even if the technical problem over D6 is formulated, as argued by the Appellant, as the mere provision of an alternative liquid treatment composition for cleaning and softening/care of fabrics, also providing perceived cleanliness.
 - 7.1 It is uncontested that this less ambitious technical problem is solved across the breadth of Claim 1.

(Non) Obviousness

8. It remains to be decided whether the skilled person, starting from the liquid treatment composition of D6, and wishing to provide an alternative liquid treatment composition for providing cleanliness (also perceived) and softness/care, would have been motivated by D6 itself, or in combination with common general knowledge or with any of the other invoked documents, such as D2 and D3, (and would have wanted to try) to use one of the selected hueing dyes instead of, or in addition to, the fluorescent whitening agent used in the compositions of D6. Thus, whether D6, taken alone, or in combination with common general knowledge, or with any of invoked D2 or D3, rendered obvious the claimed liquid treatment composition.

8.1 D6 taken alone

It was not in dispute that D6 taken alone or in combination with common general knowledge does not render obvious the claimed subject-matter. Hence, only the combination of D6 with any of D2 or D3 is dealt with *infra*.

8.2 The disclosure of D6

8.2.1 D6 concerns softening laundry detergent compositions formulated to give excellent softening without compromising cleaning performance (page 3, lines 1-2).

8.2.2 More particularly, D6 (Claim 1) concerns a conditioning liquid laundry composition with improved particulate soil cleaning comprising:

- a) at least 5 % of at least one anionic surfactant;
- b) 0.01 % to 5 % of at least one amphiphilic carboxy containing polymer;
- c) 0.05 % to 3 % of polyvinylpyrrolidone polymer; and

d) at least one cationic conditioning polymer.

- 8.2.3 According to D6 (paragraph bridging pages 3 and 4 and page 5, lines 15 to 21), the at least one anionic surfactant and the at least one cationic polymer should be in a ratio and concentration to effectively soften and condition fabrics under a predetermined laundering process whilst the combination of amphiphilic carboxy containing polymer and polyvinylpyrrolidone forms an effective anti-redeposition system. Hence, D6 is focused on this particular combination of components.
- 8.2.4 The Board accepts the Appellant's view that the closest embodiment to the claimed invention is disclosed in Example 4 (Table 8) of D6, illustrating an aqueous polyvinylpyrrolidone/polyacrylate (amphiphilic carboxy polymer) composition as Formulation 8 comprising also:
- Anionic surfactant,
 - Softening cationic polymer (e.g. cationic cellulose; cationic guar), a cationic conditioning polymer,
 - Fluorescent whitening agent,
 - Protease enzyme,
 - Lipase enzyme, and
 - Cellulase enzyme.
- 8.2.5 The composition of Claim 1 as granted is distinguished therefrom by the presence of a copolymer cationic deposition aid as defined in Claim 1 instead of a cationic cellulosic or cationic guar polymer, as well as by the presence of a specific hueing dye.
- 8.2.6 D6, however, discloses that the cationic polymer can be a copolymer as defined in Claim 1 at issue, such as mentioned in its Claim 4, so that the first distinguishing feature concerns an analogous

substitution, which is disclosed as such and is obvious over D6.

- 8.2.7 In respect of the second distinguishing feature D6 discloses that the fluorescent whitening agents contained in Formulation 8 are, albeit optional, the preferred components for preventing the yellowing of the fabrics after repeated washing (see the paragraph bridging pages 36 and 37). D6 does not contemplate the use of any hueing dye therefor, instead of or in combination with fluorescent whitening agents.
- 8.3 D6 taken in combination with any of D2 or D3
- 8.3.1 Documents D2 (paragraphs [0002] to [0004], [0006], [0032] to [0046]) and D3 (paragraphs [0002] to [0004], [0006], [0034] to [0043]) both disclose laundry detergent compositions comprising particular hueing dyes; both documents generally teach that the yellowing of fabrics upon repeated washing can be addressed with the use of hueing dyes, and particularly that the unwanted build up of the hueing dyes can be prevented by using specific hueing dyes, which are identical to those defined in Claim 1 at issue.
- 8.3.2 The laundry compositions of D2 can comprise cationic surfactants (paragraphs [0026] and [0027]), unspecified soil suspending agents and unspecified fabric care benefit agents or smectite clays softeners (paragraph [0050]). D3 contains a similar disclosure (paragraphs [0028], [0029] and [0047]). The Appellant has argued that the disclosure "fabric care benefit agent" and the disclosed "smectite clays" imply for the skilled person that the type of composition disclosed by D2/D3 can be equivalent to that of D6 in respect of its capability of providing softness/care. It is also undisputed that

D2 and D3 also mention that fluorescent whitening agents can be used in addition to the hueing dyes.

8.3.3 However, the laundry detergent compositions of D2 and D3, though possibly providing also some softening/care, do not contemplate the use of cationic polymer deposition aids therefor, nor of a polyvinylpyrrolidone/polyacrylate as anti-redeposition system, as used in the formulation of the closest prior art D6. Thus, they cannot be considered, for the Board, to be compositions equivalent to that of D6.

8.4 Hence, in the present case, on the one hand, it was known to specifically prevent yellowing by using fluorescent whitening agents in liquid softening/care compositions comprising a cationic polymer deposition aid and a polyvinylpyrrolidone/polyacrylate anti-redeposition combination (D6), while, on the other hand, it was known to use hueing dyes, which do not provide unacceptable build up, in generic laundry detergent compositions, which can have possibly also unspecified softening/fabric care properties (D2 or D3).

8.5 Therefore, for the Board, the skilled person

- starting from the known liquid polyvinylpyrrolidone/polyacrylate composition of D6, which comprises a cationic polymer as deposition aid,
- faced with the technical problem solved, and
- considering the particular disclosure of each of D2 and D3 in respect of hueing dyes used in generic laundry detergent compositions, without mention of the use of cationic polymer deposition aids and of a polyvinylpyrrolidone/polyacrylate anti-redeposition combination,

- looking for further/alternative formulations to the Formulation 8 of D6,
- would have rather considered the numerous component alternatives/modifications offered by the same disclosure of D6, which by itself provides excellent softening/fabric care and, in the absence of suggestion or motivation in this direction, would not obviously have wanted to (try to) replace the fluorescent whitening agents disclosed by D6 with a hueing dye not suggested in D6 for its system but disclosed in any of D2/D3 in connection with a generic laundry detergent compositions not comprising polymeric deposition aids for softening/care and a polyvinylpyrrolidone based anti-redeposition system, nor to add such hueing dyes to the formulation of the closest prior art, which already provides unmodified, excellent softening/fabric care and anti-yellowing properties;
- hence, as the use of hueing dyes in fabric care/softening compositions of the kind of those of D6 was not suggested from D2 or D3, i.e. as this option was not at hand for the skilled person wanting an alternative fabric softening/care composition over D6, the combination of the teaching of D6 with that of D2/D3 would only be possible, retrospectively, with knowledge of the object to be achieved.

8.6 Thus, the Board considers that the composition of Claim 1 as granted was not obvious, without hindsight, over the compositions of D6.

8.7 The use of a hueing dye with a composition according to Claim 1 at issue, as defined in Claim 13, is consequently also non-obvious.

9. Hence, the Board concludes that the Main Request is allowable.

Conclusion

10. The invoked grounds of opposition do not prejudice maintenance of the patent according to the main request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of the first instance with the order to maintain the patent in the following version:
 - Claims as granted;
 - Description: page 2 of the patent specification as filed during oral proceedings and pages 3 - 29 of the patent specification as granted.

The Registrar:

The Chairman:



D. Magliano

L. Li Voti

Decision electronically authenticated