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**Datasheet for the decision  
of 25 April 2019**

**Case Number:** T 2335/15 - 3.3.06

**Application Number:** 10165935.7

**Publication Number:** 2397539

**IPC:** C11D3/37, C11D17/04, C11D3/39,  
C11D3/43

**Language of the proceedings:** EN

**Title of invention:**  
Multi-compartment pouch

**Patent Proprietor:**  
The Procter & Gamble Company

**Opponents:**  
Reckitt Benckiser (Brands) Limited  
Henkel AG & Co. KGaA

**Headword:**  
Multi-compartment pouch / The Procter & Gamble Company

**Relevant legal provisions:**  
EPC Art. 54

**Keyword:**  
Novelty (all requests) - no

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 2335/15 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 25 April 2019**

**Appellant I:** Reckitt Benckiser (Brands) Limited  
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**Respondent:** The Procter & Gamble Company  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 19 November**

2015 rejecting the opposition filed against  
European patent No. 2397539 pursuant to Article  
101(2) EPC.

**Composition of the Board:**

**Chairman**           E. Bendl  
**Members:**         P. Ammendola  
                      C. Heath

## Summary of Facts and Submissions

I. The appeals were filed by the appellants I and II (opponents 1 and 2) against the decision of the opposition division to reject the oppositions filed against the patent in suit (hereinafter "the patent").

II. Claim 1 of the patent (hereinafter "granted claim 1") reads:

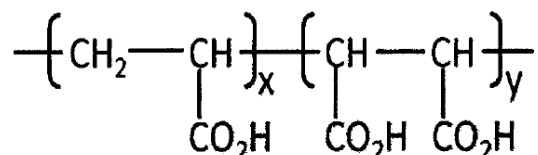
*"1. A multi-compartment pouch comprising a first compartment and a second compartment, wherein,*

*the first compartment comprises a solid composition, wherein the solid composition comprises;*

- an oxygen bleach source;*
- a bleach activator;*
- a polycarboxylate polymer;*

*and the second compartment comprises a liquid composition, wherein the liquid composition comprises;*

- a low molecular weight solvent,*  
*wherein the polycarboxylate polymer is a maleic acid/acrylic acid copolymer having the following formula;*



*wherein x and y are each independently from 5 to 1000,*

*and wherein the pouch material is in the form of a water-soluble film."*

III. With its statement of grounds of appeal, appellant II filed, *inter alia*, document D13 (BASF technical brochure for "Sokalan<sup>®</sup> CP Marken", September 1998).

With its statement of grounds of appeal, appellant I filed, *inter alia*, document D15 (BASF technical brochure for "Sokalan<sup>®</sup> Marken / Tamol<sup>®</sup> Marken", September 2000).

IV. With its reply to the grounds of appeal the respondent filed a set of amended claims labelled as Auxiliary Request 1 (apparently identical to the Auxiliary Request 1 of 12 August 2015 already pending before the opposition division).  
Claim 1 of this request only differs from granted claim 1 in the passage (amendment underlined):

"....

- *a bleach activator;*
- *from 3% to 10%, by weight of the solid composition, of a polycarboxylate polymer;*

*and the second compartment..."*.

V. The parties' requests were as follows:

Both appellants requested that the decision of the first instance be set aside and the patent be revoked.

The respondent requested that the appeals be dismissed and that the patent be maintained as granted (Main Request) or, alternatively, that the patent be maintained on the basis of the claims according to

Auxiliary Request 1 filed with the reply to the grounds of appeal.

- VI. Both appellants argued that the opposition division had erred in finding that the subject-matter of granted claim 1 was novel (ground for opposition under Article 100(a) EPC in combination with Articles 52(1) and 54 EPC) over, *inter alia*, the prior art example disclosed in Table 3 of D1 (WO 2008/063468 A2) in combination with the teaching in the bottom half of page 10 of the same citation. In their opinion D13 and D15 made it plausible, *inter alia*, that "SOKALAN® CP45" mentioned on page 10 of D1 was a copolymer of **acrylic acid** and **maleic acid** (hereinafter this kind of copolymer is also indicated as **AA/MA copolymer**) in accordance with the formula given in granted claim 1. The same novelty objection applied to the subject-matter of claim 1 of the Auxiliary Request 1.

The respondent rebutted these lines of reasoning essentially on the grounds that the skilled person reading the disclosure of the example of Table 3 of D1 would have needed to make several selections prior to arriving at the possibility to use in this example the "SOKALAN® CP45" commercial product mentioned on page 10 of D1 as dispersant polymer. Moreover, it argued that this mention on page 10 of D1 referred to a product with a different chemical structure to the "SOKALAN® CP45" described in D13 or D15 and, thus, with not necessarily the same chemical structure as the polycarboxylate polymer described in granted claim 1. In respect of the novelty objection against claim 1 of the Auxiliary Request 1 the respondent stressed that if the skilled person had come to the conclusion that the dispersant polymer - which formed about 5% by weight of the solid powder phase of Table 3 - could be the

"SOKALAN<sup>®</sup> CP45" described in D13 or D15, the amount of AA/MA copolymer in this prior art would have corresponded to less than 3% by weight of the solid composition because in this commercial product only about 45% by weight was constituted of AA/MA copolymer.

## **Reasons for the Decision**

### *Procedural issues*

1. Admission of D13 and D15 into the appeal proceedings

The board notes that:

- Both D13 and D15 have been filed with the statements of grounds of appeal and, thus, in accordance with Article 12(1) RPBA.
- The filing of these documents is manifestly in reply to the findings of the opposition division in the decision under appeal (see the fourth paragraph on page 12) that the opponents had failed to provide evidence showing that "SOKALAN<sup>®</sup> CP45" mentioned in D1 was an AA/MA copolymer according to the formula in granted claim 1.
- The respondent did not object to the admission of these documents into the appeal proceedings.

In view of the above the board saw no reason to use its discretion Article 12(4) RPBA to not admit documents D13 and D15 into the appeal proceedings.

### *Main request (patent as granted)*

2. Lack of novelty (Article 100(a) EPC in combination with Articles 52(1) and 54 EPC): claim 1.



2.1 It is common ground among the parties that Table 3 of D1 discloses a two compartment packet made of a water soluble film that contains a solid composition (labelled in Table 3 of D1 as "Powder Phase") in one compartment (the "Non-liquid compartment" of Table 3) and a liquid composition (the "Liquid Phase" of Table 3) in another compartment (the "Liquid compartment" of Table 3). The solid composition comprises an oxygen bleach source ("Sodium Percarbonate") and a bleach activator ("TAED") and the liquid composition comprises a low molecular weight solvent ("DiPropylene Glycol").

Hence, the sole features of granted claim 1 not explicitly described as being present in the prior art example of Table 3 of D1 are:

- the presence in the "*solid composition*" of a "*polycarboxylate polymer*" ingredient that must be a "*maleic acid/acrylic acid copolymer*" of the specified formula (see II above) in which each of the two variables "x" and "y" are required to independently be "*from 5 to 1000*".

2.2 However, about 5% by weight of the "Powder Phase" of Table 3 is formed of a (not further specified) "Dispersant polymer".

2.2.1 Even though the nature of this ingredient is further described at the bottom (starting at line 19) of page 10 of D1, the respondent argued that the skilled person would not necessarily have taken into consideration this specific disclosure of the same document, as they could as well have directly relied on their common general knowledge to attribute a technically sound meaning to the term "Dispersant polymer". To decide to look for further information in the rest of D1 would

constitute a "first selection" required to fill the gap caused by the incomplete disclosure in Table 3.

2.2.2 This argument is unconvincing because in the present case the disclosure provided by the cited passage can only be correctly determined in view of the whole disclosure provided by that document. Hence, the skilled person would necessarily have taken into consideration also the teaching contained in the bottom half of page 10 of D1 when attempting to further identify which chemical compounds were possibly described by the general term "Dispersing polymer" in Table 3 of D1.

2.2.3 The respondent stressed the contradiction between the undisputed fact that, as apparent from D13 and D15, the commercially available product "SOKALAN<sup>®</sup> CP45" is an AA/MA copolymer, and the disclosure in lines 26 to 28 of page 10 of D1 in which "SOKALAN<sup>®</sup> CP45" is rather described as a methacrylate/maleate copolymer.

2.2.4 However:

- The bottom half of page 10 discloses as preferred dispersant polymers, *inter alia*, the "acrylate/maleate copolymers" that are "available under the tradename SOKALAN<sup>®</sup> from BASF Corp."
- "SOKALAN<sup>®</sup> CP45" is the only specific example of a commercial product with such trade name explicitly mentioned in D1.
- Neither D13 nor D15 disclose any methacrylate/maleate copolymer among those available under the tradename SOKALAN<sup>®</sup> from BASF Corp.

Hence, the skilled person aware of the contradiction stressed by the respondent could only have reasonably concluded that the description of the preferred commercial product described in D1 (i.e. as a methacrylate/maleate copolymer) had to be the result of an error. However, the skilled person would have found plausible the indication regarding the commercial product "SOKALAN<sup>®</sup> CP45" in lines 26 to 28 of page 10 of D1 since it was an example (the only one) in D1 of a commercial product "available under the tradename SOKALAN<sup>®</sup> from BASF Corp." and also was, apparently, an "acrylate/maleate copolymer", i.e. an example of the preferred group of dispersing polymers that is identified in the immediately preceding lines 23 to 26 on the same page 10 of D1.

- 2.2.5 The respondent also stressed that SOKALAN<sup>®</sup> CP45 was just one example from one of several different classes of dispersant polymers listed in the bottom half of page 10 of D1.

The board concurs with the respondent that the combination of the example of Table 3 with the bottom half of page 10 of D1 would have implicitly disclosed to the skilled person several alternatives for the "Dispersant polymer" to be used in the two compartment packet described in Table 3 of D1. Nevertheless, one of these alternatives (all directly and unambiguously disclosed therein) remains that of using as a dispersant polymer the commercial product SOKALAN<sup>®</sup> CP45. Hence, SOKALAN<sup>®</sup> CP45 is also among the prior art variants disclosed in D1.

- 2.2.6 D13 and D15 both describe the commercial product "SOKALAN<sup>®</sup> CP45", as well as "SOKALAN<sup>®</sup> CP5" used in the present invention as a suitable AA/MA copolymer (see

page 7, line 39, of the published patent), as a "maleic acid/acrylic acid copolymer" with a molecular weight of 70,000 g/mol, i.e. both SOKALANs are necessarily in accordance with the formula in granted claim 1.

Thus, one of the alternative embodiments of the prior art implicitly, but nevertheless directly and unambiguously disclosed by D1 - i.e. the two compartment packet of Table 3 of D1 in which SOKALAN<sup>®</sup> CP45 is used as a "Dispersant polymer" ingredient - possesses all the features of the patented multi-compartment pouch defined in granted claim 1.

- 2.3 Thus, the subject-matter of granted claim 1 is anticipated by the prior art, and thus the ground of opposition of lack of novelty (Article 100(a) in combination with 52(1) and 54 EPC) prejudices the maintenance of the patent as granted.

#### *Auxiliary Request 1*

3. Lack of novelty (Article 100(a) EPC in combination with Articles 52(1) and 54 EPC): claim 1.
- 3.1 This version of claim 1 (see IV, above) only differs from granted claim 1 in that it further specifies that the polycarboxylate polymer must constitute from 3% to 10%, by weight of the solid composition.
- 3.2 It is undisputed that if the amount indicated in Table 3 of D1 for the "Dispersant polymer" is considered disclosed as the amount of the AA/MA copolymer present in the commercially available product "SOKALAN<sup>®</sup> CP45", for the reasons indicated above (that granted claim 1 is anticipated by the prior art disclosed in D1 by the combination of Table 3 with the bottom half of page

10), the same prior art anticipates the subject-matter of claim 1 of the Auxiliary Request 1.

- 3.3 As defined in D13 and D15, "SOKALAN<sup>®</sup> CP45" is commercially available in two forms: in liquid form including only 45% by weight of the actual polymer and in solid form, i.e. as granulate containing 92 % by weight polymer. According to the respondent no hint was given as to which of these options was used in D1.
- 3.4 The respondent has construed the amount indicated in Table 3 of D1 as referring to the total amount of commercially available liquid product "SOKALAN<sup>®</sup> CP45" and, thus, has maintained that the actual amount of the dispersant polymer ingredient present in the prior art is below the minimum of 3% of the solid composition now required in claim 1.
- 3.5 However, the respondent's construction of the amount indicated in Table 3 of D1 is unconvincing for the following reasons.
- 3.5.1 Firstly, the relevant amount reported in Table 3 is explicitly attributed to the "Dispersant polymer" (emphasis added by the board), not to any product containing the polymer.
- 3.5.2 Secondly, the fact that Table 3 relates to an example of an invention described in a patent document for which the amount of an ingredient is given without specifying its chemical nature any further, would only have been reasonably interpreted by the skilled reader as referring to the amount of that ingredient alone, and not (as instead implied by the respondent's construction) as possibly encompassing the substantially variable amounts of any other ingredient

(e.g. from solvents to impurities) possibly present in the commercial forms under which such ingredient might have been found on the market.

Yet to construe the amount of "Dispersant polymer" reported in Table 3 as proposed by the respondent would make the technical teaching meaningless for lack of any indication of the precise amount of this ingredient in the example.

This reasoning is not credible not least because the brochures (such as D13 or D15) and the labels of commercial products always give the concentration of the relevant compound, which would have allowed the skilled person to determine the amount of commercial product corresponding to the required amount of the relevant compound.

- 3.6 Thus, the subject-matter of claim 1 of the Auxiliary Request 1 is found also anticipated in the prior art. Hence, this Auxiliary Request must also be refused in view of Articles 52(1) and 54 EPC.

## **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:



D. Magliano

E. Bendl

Decision electronically authenticated