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**Datasheet for the decision
of 21 May 2019**

Case Number: T 0740/17 - 3.3.06

Application Number: 08806428.2

Publication Number: 2193188

IPC: C11D3/20, C11D3/22, C11D3/37,
C11D3/395, C11D17/00

Language of the proceedings: EN

Title of invention:
COMPOSITION

Applicant:
Reckitt Benckiser Finish B.V.

Headword:
Bleaching composition/Reckitt Benckiser

Relevant legal provisions:
EPC Art. 52(1), 54, 56, 84, 111(1), 123(2)
RPBA Art. 12(2), 12(4)

Keyword:

Inventive step - (no) - main request

First auxiliary request - admissible (yes) - formally allowable
(yes)

Remittal to the department of first instance for further
prosecution on the basis of the first auxiliary request -
(yes)

Decisions cited:

Catchword:



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Case Number: T 0740/17 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 21 May 2019

Appellant: Reckitt Benckiser Finish B.V.
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2132 WT Hoofddorp (NL)

Representative: Hodgetts, Catherine Dawn
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 24 October 2016
refusing European patent application No.
08806428.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: G. Santavicca
C. Heath

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examining Division to reject European patent application n° 08806428.2.
- II. In the decision under appeal, the then pending main and first to fourth auxiliary requests were objected to under Article 56 EPC, in so far as their claimed subject-matter was obvious over D2 (GB 2 428 694 A) taken as the closest prior art. *Inter alia*, the Examining Division found that the technical problem (of improving the stability of particulate material comprising a manganese bleach catalyst) was not solved across the whole breadth of claim 1, but only by two specifically coated catalysts as illustrated in the examples of the application.
- III. Claim 1 according to the then pending main request read as follows (amendments to claim 1 as originally filed made apparent by the Board):
- "1. A particulate material comprising a **Mn(II) or Mn(III)** bleach catalyst, wherein the particles of the bleach catalyst have a coating, **wherein:**
the coating comprises citric acid, a citrate, maleic acid, a maleate, a polacrylate, polyacrylic acid, or a polyol; and the weight ratio of the coating to the bleach catalyst is in the range of 10 - 60 wt%."*
- IV. With its statement setting out the grounds of appeal (dated 3 March 2017), the Appellant maintained the main request dealt with in the decision under appeal but submitted new first and second auxiliary requests, and requested oral proceedings.

- V. Claim 1 according to each of the new first and second auxiliary requests reads, respectively, as follows (amendments to claim 1 as originally filed made apparent by the Board):

(New first auxiliary request)

"1. A particulate material comprising a **Mn(II) or Mn(III)** bleach catalyst, wherein the particles of the bleach catalyst have a coating, **wherein: the coating comprises citric acid or a citrate;** and the weight ratio of the coating to the bleach catalyst is in the range of 10 - 60 wt%."

(New second auxiliary request)

"1. A particulate material comprising a **Mn(II) or Mn(III)** bleach catalyst, wherein the particles of the bleach catalyst have a coating, **wherein: the coating comprises i) citric acid or a citrate, and ii) a polyol which is a hydrolysed polyacetate;** and the weight ratio of the coating to the bleach catalyst is in the range of 10 - 60 wt%."

- VI. In response to the summons to oral proceedings, the appellant withdrew its request for oral proceedings and requested the issuance of a decision based on the file as it stands.
- VII. The Board with its communication dated 21 February 2019 closed the debate and cancelled the scheduled oral proceedings.
- VIII. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the Main Request dealt with in the decision under appeal or, auxiliary, on the basis of the claims according to the

first or the second auxiliary request filed with the letter dated 3 March 2017.

Reasons for the Decision

1. Main request - Inventive step
 - 1.1 The appellant contests in particular that the decision under appeal did not properly consider:
 - that D2 was acknowledged in the application as filed and that the object of the invention was to further improve the stability of bleach catalysts;
 - that D2 neither illustrated the coating of Mn(II) or (III) bleach catalyst nor discussed anywhere the ratio of coating to bleach catalyst to be used;
 - that the examples of the original application evidenced that the claimed coating stabilised the specifically claimed Mn(II) or (III) catalysts, hence
 - that the claimed subject-matter according to the main request was not obvious over D2.
 - 1.2 The Board cannot share this position for the following reasons:
 - 1.2.1 The application as filed (page 2, lines 17-20) indeed acknowledges that the coating of bleach catalyst granules to improve the stability thereof was known *inter alia* from D2, which thus was acknowledged in the application as filed as relevant prior art.
 - 1.2.2 D2 (page 1, lines 8-9) relates to the stability of transition metal bleaching catalysts (for stain removal) in compositions, and its object (page 2, lines 9-11) is to provide an air/ peroxy bleaching composition comprising a transition metal catalyst that has improved storage properties.

- 1.2.3 The technical problem to be solved as mentioned in the application as filed (page 2, lines 25-28) is to further improve the stability of particulate material comprising a bleach catalyst.
- 1.2.4 In view of the similarity of problems and solution between D2 and the application as filed, the Board has no reason to deviate from the choice made in the decision under appeal of D2 as the closest prior art.
- 1.2.5 For the Board, the technical problem as mentioned in the application as filed was formulated upon consideration of *inter alia* D2, and so it must be retained in the assessment of inventive step. This was done by the examining division in the decision under appeal.
- 1.2.6 The proposed solution according to the main request at issue consists in a coated *particulate material comprising a bleach catalyst characterised in that:*
- *the bleach catalyst is a **Mn(II) or Mn(III)** bleach catalyst;*
 - *the coating comprises **citric acid, a citrate, maleic acid, a maleate, a polacrylate, polyacrylic acid, or a polyol;** and*
 - ***the weight ratio of the coating to the bleach catalyst is in the range of 10 - 60 wt%.***
- 1.2.7 As regards the question whether this solution effectively solves the problem as formulated in the application as filed, in the decision under appeal the examining division considered the examples of the application as evidence of the effective solution of the technical stability problem solved by coating Mn(II) and (III) with respectively citric acid or citric acid and polyvinyl alcohol (a polyol), i.e.

acknowledged only some of the coatings as defined in claim 1 as being effective. As regards the further coatings, the examining division objected that the applicant had not provided a fair comparison with the closest prior art, as the comparative example concerned an uncoated bleach manganese catalyst.

- 1.2.8 The Board, considering the lack of comparative evidence over D2 in the application and in the statements of the appellant, and the fact that D2 (page 16, lines 18-19) relates to enhanced stability of bleach catalysts when in contact, e.g. in form of coating, with acidic materials, as also illustrated in its last two examples on page 21 (one of which includes polyacrylic acid), has no reason to take a different stance on this issue.
- 1.2.9 Consequently, the technical problem effectively solved over D2 merely consists in providing further stable particulate material comprising a Mn(II) or (III) bleach catalyst.
- 1.2.10 As regards the obviousness of the proposed solution over D2, the position of the Board is as follows:
- 1.2.11 Document D2 *inter alia* discloses (claim 13 and paragraph bridging pages 2 and 3) a process for the preparation of a granule comprising a transition metal bleaching catalyst and an acidic component, the process comprising the steps of granulating a transition metal bleaching catalyst with the acidic component, whereby the acidic component can be a coating, the amount of which should be such to provide a granule having a buffer capacity of at least 6 (the buffer capacity of the granule - see page 2, lines 22-25 - is the amount in ml of aqueous 0.01 M NaOH required to bring an

aqueous solution of 1.00 g of granules in 50 ml to a pH of 9).

1.2.12 The closest embodiment of D2, as also acknowledged in the decision under appeal, is the coated bleach catalyst illustrated in the penultimate example on page 21 of D2, which granule comprises 5.3 wt% catalyst, in admixture with 80.1 wt% of sulphate, and 11.3 wt% of a coating made up of CP13S (which is a Sokalan series polyacrylic acid). It has a buffer capacity of 25.8 ml (the best of all examples) with 90% remaining after 4 week storage. The weight ratio of the coating to the bleach catalyst (11.3/5.3) is higher than that defined in claim 1 at issue.

1.2.13 Hence the bleach catalyst particulate material according to claim 1 at issue is distinguished from the closest embodiment of D2 in that:

- the bleach catalyst is Mn(II) or (III); and
- the weight ratio coating/catalyst is from 10% to 60%.

1.2.14 The board notes that Mn(II) or Mn(III) compounds are mentioned as such in D2 among the catalysts suitable to be protected (D2: page 4, line 27, and page 6, line 5), so that for the skilled person their choice represents an obvious alternative for implementing the example illustrated in D2.

1.2.15 As regards the second distinguishing feature, D2 on page 21 discloses an example which shows a 2 wt% of soap/fatty acid coating on a granule comprising 6 wt% catalyst (hence, a weight ratio of 2:6, thus falling under the range of claim 1 at issue), which is enough to attain a buffer capacity of 8.1 ml (i.e. a better capacity than the at least 6 ml as required on page 3, lines 1-2, of D2). D2 further discloses (page 7, lines

4 to 10) that the amount of acidic component to provide the buffer capacity adds to the overall cost of the product, and that by increasing the buffer capacity to at least 6, a significant increase in stability is provided which offsets the added cost of the expensive acidic component. Eventually, on page 11, lines 10-13, D2 discloses that the builder polymeric materials are identical to those used as binder and coating materials and are normally used at levels of from 0.5 to 10% by weight of the composition.

- 1.2.16 For the Board, the skilled person gathers sufficient motivation from the above disclosure of D2 for providing further, stable (i.e. with a buffer capacity of at least 6 ml), coated bleach catalyst particles containing less coating material, thus having a weight ratio between coating material and catalyst metal as claimed. For instance for the skilled person, in light of the teaching of D2 it would be obvious to try to reduce the weight of CPS13 coating from 11.3 wt% to any lower value which still ensures the minimum buffer capacity. For instance to a value of e.g. 2 wt%, which is about the coating weight for the last example of D2, provided that it still results in a buffer capacity of at least 6 ml, in the expectation (hinted at by D2) that this reduces the cost of the coating and nevertheless stabilises the bleach catalyst.
- 1.3 It follows from the foregoing analysis that the particulate material defined in claim 1 at issue was obvious for the skilled person starting from D2 and faced with the stated technical problem.
- 1.4 Consequently, the Board has no reason to deviate from the decision under appeal that the main request does not comply with Article 56, and is thus not allowable.

2. *First auxiliary request*

2.1 *Admissibility*

This request can be seen as a reaction to the decision under appeal, in particular to the argument that a technical effect has only been demonstrated by the examples. Claim 1 thereof now specifies the compulsory presence of citric acid or citrate in the coating, as illustrated in the examples of the application. It is thus a restriction of the main request to these particular coatings.

Therefore, the Board decides to admit this request into the appeal proceedings (Article 12(2) and 12(4) RPBA).

2.2 *Amendments*

2.2.1 Claim 1 at issue is directly and unambiguously based on claims 1 (specifying all features but the specific catalyst compound and the specific coating materials), 4 (specifying all coating materials including citric acid or citrate) and 9 (specifying generally that the catalyst is a manganese compound) of the application as filed, and includes the following further limitations, which also find basis in the application as filed, as follows:

- "... comprising a **Mn(II) or Mn(III)** bleach catalyst ...", on page 5, lines 13 and 14, in which a general preference for Mn(II) and (III) compounds is expressed, as a consequence of the fact that the problem addressed concerns these compounds (see page 1, lines 28 and 29). Both are also illustrated in Examples 1 and 2;

- **"..., wherein: the coating comprises citric acid or a citrate;"** the system citric acid/citrate is the first of the preferred coating materials specified in the application as filed on page 4, line 17, or in original claim 4. More specifically, citric acid is used in original Examples 1 and 2, both according to the invention.

Furthermore, the combination of citric acid with Mn(II) or Mn(III) is specifically, and respectively, pointed in Examples 1 and 2 according to the invention, and no further coating materials are illustrated in the examples of the application as filed.

2.2.2 The features of dependent claims 2, 5, 6 to 10 identically correspond to those of original claims 2 and 5 to 7. The features of dependent claim 3 are based on page 5, lines 14-16 of the application as filed. The features of dependent claim 4 are worded identically to those of original claim 3, in which however a polyol could be used as an alternative to citric acid/citrate (see also original page 4, lines 13-14).

Now, however, claim 4 depends on claim 1, requiring the compulsory presence of citric acid/citrate, and polyol is only optionally co-present therein.

The basis therefor can be found in the original description, for instance on page 4, line 30, which discloses in generic terms the possibility of the combination of the different alternatives; and in Example 2, which specifically discloses the combination of citric acid and polyvinyl alcohol, as a polyol, in the same coating.

2.2.3 Independent claims 11 and 12 are, respectively, based on original claims 10 and 11, having the same scope. Claim 13 is a new independent claim, which is based on the general disclosure on original page 5, lines 18-20.

2.2.4 Summing up, the claims of this request comply with Article 123(2) EPC.

2.3 *Clarity*

No objection whatsoever under Article 84 EPC was raised by the examining division against the subject-matter of the main request. The Board has no reason to take a different stance in respect of the subject-matter of the first auxiliary request, in particular because the claims only appear to contain clear terms of art.

2.4 *Novelty*

Novelty of the subject-matter of the main request was acknowledged in the decision under appeal. The Board has no reason to take a different stance on this issue in respect of the subject-matter of this request.

2.5 *Inventive step*

2.5.1 The appellant argued that both examples of the application exhibited the features of claim 1 thereof, and that the technical effect thereof had been acknowledged by the examining division.

2.5.2 The Board however notes that the decision under appeal does not contain any explicit statement acknowledging that the subject-matter as presently defined in claim 1 at issue solves the technical problem stated in the application as filed and is not obvious over e.g. D2.

2.5.3 The decision under appeal in fact only acknowledges that the problem stated on page 2, lines 25-28, of the application as filed was solved by the two coated bleach catalyst particulates illustrated in the examples of the application (one of which was coated only with citric acid and the other with citric acid and polyvinyl alcohol (a polyol)), and (reasons, 8) objects that the subject-matter of claim 1 of the then pending third auxiliary request lacked an inventive step because the coating could alternatively (to citric acid or citrate) comprise a polyol, for which no evidence was available that it (too) stabilised the bleached catalyst particles so coated.

2.6 Thus, there is no decision to review in respect of the inventive step of the subject-matter of the request at issue.

3. Remittal

3.1 The pending claims according the new first auxiliary request were not dealt with in the decision under appeal. It cannot be inferred from the decision under appeal (reasons, 2, 3 and 8) whether the now claimed subject-matter is still objectionable e.g. for lack of an inventive step.

3.2 The Board thus considers it appropriate to remit the case to the Examining Division pursuant to Article 111(1) EPC for further prosecution, i.e. for the examination of the compliance of the new first auxiliary request with the requirements of the EPC, in particular as regards inventive step of its claimed subject-matter.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted back to the Examining Division for further prosecution.

The Registrar:

The Chairman:



D. Magliano

J.-M. Schwaller

Decision electronically authenticated