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**Datasheet for the decision
of 12 February 2019**

Case Number: T 0793/17 - 3.3.06

Application Number: 11174624.4

Publication Number: 2380966

IPC: C11D17/04, B65D65/46

Language of the proceedings: EN

Title of invention:

Process for making a water-soluble pouch

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Rideau Machinery Inc.
Colgate-Palmolive Company

Headword:

Detergent water-soluble pouch / Procter & Gamble

Relevant legal provisions:

EPC Art. 56
RPBA Art. 13(1), 13(3)

Keyword:

Inventive step (main request) - no - improvement not credible
(second auxiliary request) - yes - credible improvement
Late-filed first auxiliary request - no convincing
justification for late filing

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0793/17 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 12 February 2019

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 February**

2017 revoking European patent No. 2380966
pursuant to Article 101(3) (b) EPC.

Composition of the Board:

Chairman J.-M. Schwaller

Members: P. Ammendola

J. Hoppe

Summary of Facts and Submissions

- I. The appeal was filed by the proprietor (hereinafter the "appellant") against the decision of the opposition division to revoke European patent No. 2380966 because the subject-matter of claim 1 of all the requests then on file lacked inventive step in view of the prior art disclosed in document D1 (WO 02/42408 A2).
- II. With its grounds of appeal the appellant filed five sets of amended claims labelled as First to Fifth Auxiliary Request (AR1 to AR5).
- III. Opponent I (hereinafter the "respondent I"), which was the sole who replied to the grounds of appeal, referred to its written submissions during the opposition proceedings in respect of the objections against granted claim 1 for added subject-matter, insufficient disclosure and lack of novelty of vis-à-vis D1. Additionally, it submitted that:
- the Fifth Auxiliary Request should not be admitted because it could have been filed in the course of the opposition proceedings;
 - the prior art disclosed in D7 (US 2,497,212) and D11 (US 2,219,578) was highly relevant against inventive step of claim 1 as granted;
 - claim 1 of the Fifth Auxiliary Request also lacked inventive step when starting from the prior art disclosed in D1.
- IV. No further objection was raised by any of the opponents
- V. With letter of 21 August 2018, the appellant filed a further set of claims as Sixth Auxiliary Request (AR6).

VI. At the oral proceedings of 12 February 2019 only the appellant was represented. It filed a new First Auxiliary Request (labelled as "HEARING AR1") and changed the order of its requests so that the Fifth Auxiliary Request filed with the grounds of appeal became the Second Auxiliary Request followed by the former auxiliary requests 1 to 4 and 6.

VII. After closure of the debate, the final requests of the parties were established to be as follows:

The appellant requested that the decision under appeal be set aside and the patent be maintained as granted **(Main Request)** or, in the auxiliary, on the basis of the new First Auxiliary Request filed at the oral proceedings (hereinafter **First Auxiliary Request**) or, in the auxiliary, on the basis of one of the following requests filed with the grounds of appeal in the following order: Fifth Auxiliary Request (hereinafter **Second Auxiliary Request**), First Auxiliary Request, Second Auxiliary Request, Third Auxiliary Request, Fourth Auxiliary Request or, on the basis of the Sixth Auxiliary Request dated 21 August 2018.

Respondent I requested in writing that the appeal be dismissed.

Respondent II has filed no request.

VIII. Claim 1 of the **Main Request** (i.e. granted claim 1) reads:

"1. A process for making a detergent water-soluble pouch having a plurality of compartments the process comprising the steps of:

- a) *making a first web of open or closed pouches in a first pouch making unit having a forming surface;*
 - b) *making a second web of closed pouches, with at least two side-by-side compartments comprising liquid compositions, in a second pouch making unit having a forming surface wherein the pouches are closed with a film which is wetted on its underside and sealed onto the second web of open pouches;*
 - c) *the top film of the pouches of the second web is wetted on its upper side and brought into contact with the first web of pouches;*
 - d) *combining the first and second webs of pouches, wherein the forming surfaces bring the web of pouches into contact and exert pressure on them to seal the webs; and*
 - c) *cutting the resulting web of pouches to produce individual pouches having a plurality of compartments,*
- wherein at least the second pouch making unit is a rotatory drum."*

Claim 1 of the **First Auxiliary Request** differs from granted claim 1 for the amendment at point "d)" (made apparent):

- "d) combining the first and second webs of pouches directly from the forming surfaces, wherein the forming surfaces bring the web of pouches into contact without requiring the intermediate step of removing one or two of the webs from the corresponding forming surface before combining it with the other web, and exert pressure on them to seal the webs; and"*

Claim 1 of the **Second Auxiliary Request** differs from granted claim 1 for the added final wording:

"... a rotatory drum, wherein the web of pouches are held onto the making surfaces by means of vacuum, and the vacuum applied to the first and second webs is maintained until after the two webs are combined."

Reasons for the Decision

1. *Main request (claims as granted) - inventive step*
- 1.1 The closest prior art
 - 1.1.1 The board finds that the process of claim 29 of D1 (which describes a process for making a water-soluble pouch comprising a plurality of compartments in generally superposed relationship, each comprising a detergent active or auxiliary component) represents the closest prior art, for the same reasons given in the upper half of page 5 of the decision under appeal. This was undisputed by the appellant.
 - 1.1.2 Respondent I submitted that D7 and D11 disclosed highly relevant prior art because they concerned the production of water-soluble capsules and, thus, "the same processes and the same objective as the claimed invention and alleged technical advantage of providing accurate alignment of the upper and lower capsules". D7 further taught that these capsules could be used for other chemicals such as photographic chemicals.
 - 1.1.3 The board notes however that:
 - D7 and D11 focus on the preparation of medicinal capsules and do not mention detergent pouches at all;
 - D11 does not relate to the manufacture of multi-compartment capsules;

- the sole encapsulating material suggested in D7 and D11 is gelatin (see D7 column 4, line 19; and D11 first column, line 25);
- medicinal capsules such as those described in D7 and D11 are designed to be ingested, and are therefore significantly smaller than detergent pouches; moreover their gelatin shells are made thick enough to ensure sufficient rigidity for ease of ingestion and, therefore, the gelatin films are substantially different from those much thinner used for water-soluble detergent capsules.

Hence, the fact that D7 simply indicates that it can be used for making capsules of "other plastic materials" suitable for other uses, such as for "marketing photographic chemicals", amounts to a very generic teaching and, therefore, does not disclose or render evident that the process of D7 is also applicable to the specific needs of detergent pouches.

1.1.4 In conclusion, the board sees no reason to depart from the opposition division's opinion that D7 and D11 are "from very different technical fields to that of the opposed patent", and so would not be considered by the skilled person concerned with the present invention.

1.1.5 The board observes that the process of claim 29 of D1 comprises the steps of:

- (a) forming a first moving web of filled and optionally sealed pouches releasably mounted on a first moving endless surface;
- (b) forming a second moving web of filled and optionally sealed pouches releasably mounted on a second moving endless surface;

- (c) superposing and sealing or securing said first and second moving webs to form a superposed and sealed web; and
- (d) separating said superposed and sealed web into a plurality of water-soluble multi-compartment pouches.

Hence, the subject-matter of granted claim 1 differs from this prior art in that:

- the first web comprises at least two-side-by-side compartments comprising liquid compositions,
- the combination of the two webs occurs by wet-sealing,
- the forming surfaces are used to bring the two webs of pouches into contact and to exert pressure to seal them and, finally,
- the second pouch making unit must be a rotatory drum.

1.2 The technical problem addressed in the patent

Paragraphs [0003] and [0005] of the patent (which refers to prior art process disclosed *inter alia* in D1) explicitly describe as "*very difficult*" the alignment of the two separately formed webs of pouches during their combination. In the subsequent paragraph [0010] (after having underlined the absence in the claimed process of any step in which one of the webs is removed from its forming surface) the patent states that the process of the invention prevents "misalignment".

The board considers therefore immediately apparent from these passages that the patent aims at ensuring improved alignment of the two webs of pouches (in comparison to the prior art processes in which any of the webs is removed from the forming surface prior of the final sealing).

Hence, the technical problem addressed in the patent is not simply that indicated in [0006], namely providing a process for making a multi-compartment water-soluble detergent pouches with compartments in a superposed and side-by-side configuration, but also that of providing such a process that enables an improved alignment of the superposed compartments.

1.3 The solution

The proposed solution is a process according to granted claim 1, which is in particular characterised in that the forming surfaces bring the two webs of pouches into contact and exert pressure on them to seal the webs, and in that the second pouch making unit must be a rotatory drum.

1.4 The lack of success of the solution

1.4.1 It is apparent from the decision under appeal (stating in page 6, lines 13 to 20 that for an improved alignment over D1 it was necessary that the two webs were held in position, for instance with vacuum) that the opposition division implicitly acknowledged that misalignment is likely to occur in the process of D1.

The board notes that in the process of D1 (see in particular from page 41, line 17 to page 42, line 3) the sealing required to combine the two superposed webs of pouches only indicates the use of sealing rollers, which manifestly requires to remove one or both webs from their forming surfaces. The board considers it self-evident that, due to the elastic nature of the film forming the webs, at whatever moment in time before the actual sealing at least one of the two webs is removed from its forming surface, this removal would

inevitably allow more or less significant changes of the spacing among the pouches, with the consequence that the spatial distribution of the pouches in the web removed from the forming surface is likely to be more irregular than when each pouch stays in its mould until the combination of the two webs is completed. Hence, the board too finds the occurrence of misalignment in the process of D1 plausible.

- 1.4.2 The opposition division also concluded that the aimed improved alignment was not shown to derive from the features of claim 1 as granted because these latter would not ensure that the webs were held in position during their alignment.
- 1.4.3 The appellant disputed this conclusion essentially by arguing that the wording of step "d)" of claim 1, especially when considered in combination with the requirement that (at least) the second pouch making unit must be a rotatory drum, would imply that both webs remain in the corresponding forming surface until the combination of the two webs is completed.
- 1.4.4 However, this appears to be a mere allegation. Indeed, the appellant failed to identify any feature of claim 1 that would implicitly impose that the two webs of pouches must remain in the respective forming surface until they are sealed. The absence of any such implicit requirement is also consistent with the teaching in [0010] of the patent, according to which the "stay" of the webs on the respective forming surface until the two webs are sealed is only preferable (i.e. optional).

Hence, it appears well within the definition of granted claim 1 the possibility, for instance when the (second pouch making unit) rotatory drum is located above a

horizontal first pouch making unit, that the closed pouches of the second web might temporarily drop out, even completely, from the holes of the drum, before the two forming surfaces reach the point of minimum relative distance (and the sealing takes place). Any such partial or total removal of (at least) one of the webs from its forming surface prior of the actual sealing (i.e. prior of the completion of the step "d)" of combining the two webs) implies that no improved superposition of the webs is plausibly ensured.

Accordingly, the board concurs with the finding of the opposition division that the technical problem addressed is not plausibly solved across the whole scope of granted claim 1 because "an essential feature is missing from claim 1 of the main request which brings about doubts regarding the attainment of an improved alignment".

1.5 The technical problem solved and the obviousness of the proposed solution

1.5.1 The board sees no reason to deviate from the reasoning of the opposition division that the technical problem is to be redefined as the provision of a further process for making detergent water-soluble pouches, and that no inventive step is required to arrive at the claimed process (which is an embodiment of the process described in claim 29 of D1) by considering the remainder of the disclosure in D1 and the common general knowledge of a person skilled in the art of making detergent water-soluble pouches.

No further reasons need to be given in respect of these conclusions, since the appellant has only submitted

that the claimed method actually achieved an improved alignment.

- 1.5.2 Nevertheless the board considers it appropriate to mention that the fact (stressed by the appellant), that D1 underlines the spillage problems allegedly known to be associated to the use of rotatory drums, does not imply that D1 teaches away from the subject-matter of claim 1 as granted: when, as in the present case, the technical problem is simply the provision of a further process for making detergent water-soluble multi-compartment pouches, any obvious modification of the prior art of departure that still allows to obtain such pouches represents an obvious solution to the posed problem, regardless as to whether such modification involves another disadvantage or advantage.

Incidentally, the board notes that no feature of claim 1 appears to imply the prevention of the spillage problems allegedly known to occur when using rotatory drums.

- 1.5.3 The board concludes that the appellant did not provide convincing arguments that could justify reversing the finding of the opposition division in respect of the lack of inventive step of granted claim 1. Thus, the ground of opposition under Article 100(a) EPC in combination with Articles 52(1) and 56 EPC is found to prejudice the maintenance of the patent as granted and, hence, the main request must be refused.

2. *First Auxiliary Request - Admissibility*

This request has been filed at the hearing and undisputedly addresses the reasoning of the opposition division at page 6 of the decision under appeal as to

the absence of an essential feature ensuring that both webs remain in the corresponding forming surface until the combination of the two webs is completed (see the wording added in claim 1 of the First Auxiliary Request in VIII above). So, this request should manifestly have been filed with the grounds of appeal and its filing at this extremely last stage of the appeal procedure is considered abusive and unjustified by the board which, using the discretion foreseen by Articles 13(1) and (3) RPBA, decided not to admit it into the appeal proceedings.

3. *Second Auxiliary Request*

3.1 Admissibility into the appeal proceedings

The board considering that:

- filing of this request has occurred with the statement of grounds of appeal,
 - the modification introduced in claim 1 clearly aims at introducing the essential feature of the invention that the opposition division found to lack from granted claim 1, and that
 - this request only differs from the granted set of claims in that claim 1 thereof results from the combination of claims 1 and 3 as granted,
- has decided to admit this request into the appeal proceedings.

4. It is neither apparent for the board nor asserted in a substantiated manner that this request does not comply with the requirements of Articles 123(2) and (3), 83 and 54 EPC. Respondent I had failed to provide any clear and complete reasoning as to why it rebutted the findings on granted claim 1 in the decision under appeal relating to novelty, sufficiency of disclosure

and basis in the application as filed, as provided by Article 12(2) RPBA. Thus the sole issue remaining is the inventive step of its claimed subject-matter.

5. Inventive step (Article 56 EPC)

5.1 Claim 1

5.1.1 The reasons given above at points 1.1 and 1.2 in the assessment of inventive step for claim 1 as granted (i.e. the reasons that have lead the board to consider D1 as the closest prior art, to disregard D7 and D11 for lack of relevance and to identify the technical problem addressed in the patent in suit in the provision of a process for making a multi-compartment water-soluble detergent pouch with compartments in a superposed and side-by-side configuration that also enables an improved alignment of the superposed compartments) apply identically to the assessment of inventive step for claim 1 of this request.

5.1.2 The solution

The solution offered by the claim 1 at stake differs from the prior art of departure in particular because of the requirement that the webs of pouches are held onto their making surfaces by means of vacuum until after the two webs are combined.

5.1.3 Success of the solution

Since claim 1 at stake requires mandatorily that until the two webs are combined they must be held onto the making surfaces by means of vacuum, the claimed process excludes any total or partial removal of the webs from their forming surfaces.

Hence, in the absence of any evidence to the contrary, the Board sees no reason to doubt of the credibility of the statement in paragraph [0010] (stating the absence of misalignment in the process of the invention) in respect to the whole breadth of claim 1 at issue.

Accordingly, the board sees no reason to doubt of the success of the proposed solution nor to re-define the technical problem solved by the subject-matter of claim 1 under consideration.

5.1.4 Non-obviousness of the solution

In the present case the assessment of inventive step boils down to the question whether the skilled reader of D1, aiming at solving the posed technical problem, would consider obvious to modify this prior art process by, *inter alia*, removing the sealing rollers and using instead the two pouch making units also for sealing the two webs and, in particular, to do so while ensuring that the webs are held onto the respective making surfaces by means of vacuum.

The board stresses that there is no evidence on file describing the production of detergent pouches in which the same surfaces onto which two distinct water-soluble parts were formed under the application of vacuum, can also be used to bring the parts into contact and exercise pressure to seal them.

Hence, the board comes to the conclusion that at least the modification of the prior art required to arrive at the process of claim 1 under consideration that consists in using - instead of sealing rollers - the two forming surfaces onto which the webs are held by

means of vacuum, is not obvious in view of the prior art.

5.1.5 It follows from the above considerations that the subject-matter of claim 1 involves an inventive step under Article 56 EPC.

5.2 The same applies to the remaining claims 2 to 7 of this request, which define preferred embodiments of the process of claim 1, and therefore also meet the requirements of Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form on the basis of the claims of the Second Auxiliary Request (filed as "Fifth Auxiliary Request" with the grounds of appeal) and a description to be adapted where appropriate.

The Registrar:

The Chairman:



D. Magliano

J.-M. Schwaller

Decision electronically authenticated