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

**Case Number:** T 1364/17 - 3.3.06

**Application Number:** 11174622.8

**Publication Number:** 2380965

**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:**

Process for making a water-soluble pouch/Procter & Gamble

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step (patent as granted) - yes - credible  
improvement

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1364/17 - 3.3.06

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

**Appellant:** The Procter & Gamble Company  
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**Respondent I:** Rideau Machinery Inc.  
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**Respondent II:** Colgate-Palmolive Company  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 20 April 2017  
revoking European patent No. 2380965 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 patent proprietor (hereinafter "the appellant") against the decision of the opposition division to revoke European patent Nr. 2380965 because none of the then pending requests was inventive in view of the prior art disclosed in document D1 (WO 02/42408 A2).
- II. With its grounds of appeal the appellant filed eight sets of amended claims labelled as First to Eighth Auxiliary Request.
- III. In its reply to the grounds of appeal, opponent I (hereinafter "respondent I") referred to its written submissions during the opposition proceedings in respect of the objections against granted claim 1 regarding added subject-matter, insufficient disclosure and lack of novelty of vis-à-vis D1.  
  
Further it submitted that the content of D7 (US 2,497,212) and D11 (US 2,219,578) was highly relevant also against inventive step of claim 1 as granted, the patented process being just an obvious alternative to the prior art disclosed in D7.
- IV. With letter of 31 August 2018, the appellant filed a further set of amended claims as Ninth Auxiliary Request.
- V. In a communication, the board expressed its preliminary opinion that the finding of the opposition division that the subject-matter of granted claim 1 was rendered obvious by the prior art disclosed in D1 was not convincing.

VI. At the oral proceedings of 12 February 2019 none of the opponents were represented.

VII. The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (hereinafter **Main Request**) or, auxiliary, that the patent be maintained on the basis of one of the First to Eighth Auxiliary Requests filed with the grounds of appeal, or of the Ninth Auxiliary Requests filed with letter dated 31 August 2018.

Respondent I requested in writing that the appeal be dismissed.

Respondent II 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 in a second pouch making unit having a forming surface, wherein the second pouch making unit is placed above the first pouch making unit;*
- c) 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*

*d) cutting the resulting web of pouches to produce individual pouches having a plurality of compartments,  
and wherein the web of pouches are held onto the making surfaces by means of vacuum and vacuum is maintained until after the two webs have been combined."*

Dependent claims 2 to 8 define preferred embodiments of the process of claim 1.

### **Reasons for the Decision**

*Main request (patent as granted)*

1. As to the grounds of lack of novelty (Articles 100(a) in combination with Articles 52(1) and 54 EPC), insufficient disclosure (Article 100(b) EPC) and added subject-matter (Article 100(c) EPC), the opposition division found that none of these grounds prejudiced the maintenance of the patent as granted.
- 1.1 The board finds convincing the reasons given in the decision under appeal and concludes that the granted claims 1 to 8 have a basis in the application as originally filed and that their subject-matter is sufficiently disclosed and novel vis-à-vis the prior art disclosed in D1 and D7.
- 1.2 In particular, contrary to the submission of respondent I, the subject-matter of claim 1 as granted is not anticipated by the disclosure of D7, because the correct construction of the expression "*detergent water-soluble pouch*" is that given on page 5, lines 16 to 20 of the decision, namely that it implies that the claimed process must result in a unit dose that comprises a detergent composition.

1.3 Further details as to the reasons for this conclusion need not to be given since respondent I has only substantiated its objection against granted claim 1 for lack of novelty vis-à-vis D7 (and lack of inventive step over D7, see below). As indicated in the board's communication (to which respondent I has provided no reply), by simply re-filing all its written submissions made during the opposition as to the issues of added subject-matter, insufficient disclosure and lack of novelty of granted claim 1, respondent I has failed to provide any clear and complete reasoning as to why it rebuts the corresponding findings in the decision under appeal as provided by Article 12(2) RPBA.

1.4 Therefore, and since respondent II has filed no reply, these grounds of opposition do not prejudice the maintenance of the patent as granted.

2. Inventive step

2.1 The closest prior art

2.1.1 The process of claim 29 of D1, which describes a process for making a detergent water-soluble pouch comprising a plurality of compartments in generally superposed relationship, represents the closest prior art. The reasons are in substance those given in the fourth and last paragraph on page 5 of the decision under appeal.

2.1.2 Respondent I submitted that D7 and D11 disclosed highly relevant prior art as both citations were concerned with the production of water-soluble capsules and thus, "with 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". Furthermore, D7 taught in column 4, lines 21-25, that the process of this prior art could be used with other water soluble plastic films to form capsules that might be used for other chemicals such as photographic chemicals.

- 2.1.3 The board notes that D7 and D11 are focused on the preparation of medicinal capsules not of detergent pouches, and D11 does not relate to multi-compartment capsules. Furthermore the sole encapsulating material disclosed is gelatin (D7 column 4, line 19; D11 first column, line 25). For the board, these capsules are designed to be ingested and thus, are significantly smaller than water-soluble detergent pouches. Furthermore their gelatin shells are supposed to be thick enough to ensure sufficient rigidity for ease of ingestion and, therefore, their structure is substantially different from the much thinner films (of e.g. PVA) generally used for detergent water-soluble capsules.

Furthermore, 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 "photographic chemicals", amounts to a very generic teaching which does not render evident that the process of D7 is also applicable to the specific needs of detergent pouches.

In conclusion, D7 and D11 are from different technical fields which are far away from that of the opposed patent, so that the skilled person concerned with the present invention would not consider them.

- 2.1.4 With respect to the process of claim 29 of D2, which 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,

the subject-matter of granted claim 1 is distinguished therefrom in that the forming surfaces are used to bring the two webs of pouches into contact and to exert pressure to seal them, while the webs are held onto the making surfaces by means of vacuum until after the two webs have been combined.

As required by granted claim 1, this excludes any intermediate step of removing any of the webs from the corresponding forming surface.

## 2.2 The technical problem addressed in the patent

Paragraphs [0003] and [0005] of the patent (which refers *inter alia* to D1) explicitly describe as "very difficult" the alignment of the two separately formed webs of pouches during their combination. In the subsequent paragraph [0009] (after having underlined the absence in the patented process of any step in which one of the webs is removed from its forming surface) the patent states that the problem of "misalignment" does not occur in the process of the invention.

Hence, the technical problem underlying the invention is not simply that of providing a process for making multi-compartment water-soluble detergent pouches but rather that of providing such a process that also enables an improved alignment of the superposed compartments.

### 2.3 The solution

The proposed solution is the 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 without requiring the intermediate step of removing any of the webs from the corresponding forming surface and wherein the web of pouches are held onto the making surfaces by means of vacuum and vacuum is maintained until after the two webs have been combined.

### 2.4 The success of the solution

In the absence of evidence to the contrary, the board sees no reason to doubt of the credibility of the statement in paragraph [0009] describing the absence of misalignment in the process of the invention.

### 2.5 Non-obviousness of the solution

2.5.1 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 conventional 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, 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.

It follows that the subject-matter of granted claim 1 involves an inventive step under Article 56 EPC.

- 2.5.2 The same considerations apply to dependent claims 2 to 8, which define preferred embodiments of the process of claim 1, and therefore also meet the requirements of Article 56 EPC.
- 2.6 Thus, the board comes to the conclusion that also ground of opposition of lack of inventive step does not prejudice the maintenance of the patent as granted.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



D. Magliano

J.-M. Schwaller

Decision electronically authenticated