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**Datasheet for the decision
of 4 July 2023**

Case Number: T 1886/19 - 3.3.02

Application Number: 14717138.3

Publication Number: 2992054

IPC: C09B31/043, C09B31/047,
C11D3/40, C09B33/02, C09B69/00

Language of the proceedings: EN

Title of invention:
ALKOXYLATED BIS AZO DYES

Patent Proprietor:
Unilever IP Holdings B.V.
Unilever Global IP Limited

Opponent:
The Procter & Gamble Company

Headword:

Relevant legal provisions:
EPC Art. 100(b), 83
RPBA Art. 12(4)
RPBA 2020 Art. 25(2)

Keyword:

Grounds for opposition - insufficiency of disclosure
Late-filed evidence

Decisions cited:

T 3012/18

Catchword:



Beschwerdekammern

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Chambres de recours

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Case Number: T 1886/19 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 4 July 2023

Appellant: Unilever IP Holdings B.V.
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Appellant: Unilever Global IP Limited
(Patent Proprietor 2) Port Sunlight
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 3 June 2019
revoking European patent No. 2992054 pursuant to
Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	M. Maremonti
Members:	S. Bertrand
	R. Romandini

Summary of Facts and Submissions

- I. The appeal lodged by the patent proprietor ("appellant") is against the opposition division's decision to revoke European patent No. 2 992 054.
- II. The following documents are used in the present decision:
- D1 Industrial Dyes: Chemistry, Properties, Applications; edited by Klaus Hunger, 2003, pages 16-29
 - D2 WO 2008/087497 A1
 - D6 US 4,912,203
 - D7 Color Chemistry: Syntheses, Properties, and Applications of Organic Dyes and Pigments, 3rd revised edn, H. Zollinger, 2003, pages 178-181
 - D8 Experimental Report - Annex 1
 - D11 Experimental Annex relating to D6
 - D13 Colour Chemistry, R. M. Christie, 2001, The Royal Society of Chemistry, Chapter 3 "Synthesis of Azo Dyes and Pigments", pages 50-65
 - D14 Organic Chemistry, 4th edn, S. H. Pine et al., 1980, pages 608-617
 - D15 Advanced Organic Chemistry, 3rd edn, J. March, 1985, pages 470-471
 - D16 Azo Dyes, Chudgar R. J., 2000, pages 1-15
 - D17 Allgemeine Basenkatalyse der Orientierung bei Resorcin-Kupplungen, Helvetica Chimica Acta, H. F. Hodson et al., 1958, pages 1816-1823

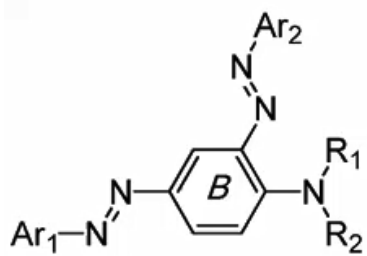
- D18 Experimental report of Colour Synthesis Solutions
- A021 Declaration of Colour Synthesis Solutions Ltd., "Comments on the synthesis of Mono and Bis azo dyes", dated 3 September 2019
- A022 Organic Chemistry in Colour, Gordon, P. F., Gregory, P., 1987, Berlin, New York, London, Paris, Tokyo, Heidelberg: Springer-Verlag, page 110
- A023 Machine translation of Grebneva, P. I., Skvortsova, G. G., Stepanova, Z. V., Vinyloxyanilines in azocoupling with benzenediazo cations, Zhurnal Organicheskoi Khimii, 1983, 19(4), pages 816-820
- A024 Handbook of Heterocyclic Chemistry (3rd edn), Alan Katritzky, V. Z., 2010, Elsevier, pages 383-472
- A025 Colour Chemistry, Allen, R., 1971, London: Thomas Nelson and Sons Ltd., pages 26-37
- A026 Organic Chemistry, Clayden, J., Greeves, N., Warren, S., 2012, Oxford: Oxford University Press, page 482
- A027 Fundamental Processes of Dye Chemistry, Fierz-David, H. E. & Blangey, L., 1949, New York, London: Interscience Publishers Inc., page 255
- A028 Organic Chemistry in Colour, Gordon, P. F., Gregory, P., 1987, Berlin, New York, London, Paris, Tokyo, Heidelberg: Springer-Verlag, pages 110-111
- A029 WO 2012/019704 A
- A030 Advanced Organic Chemistry, Reactions, Mechanisms and Structure (4th edn), March, J.,

1992, New York: John Wiley & Sons, pages
525-526

A031 Declaration of Dr Patrick D. Moore dated
26 July 2021

III. Claim 1 as granted reads as follows:

"1. A laundry composition comprising between 0.0001 to 1.0 wt% of an alkoxyated bis azo-dye and 2 to 70 wt% of a surfactant, wherein the alkoxyated bis azo-dye is of the form:



wherein:

only R₁ and R₂ may bare [sic] charged groups;
Ar₁ and Ar₂ are aromatic groups selected from: phenyl
and heteroaromatic;
R₁ and R₂ is independently selected from: H; alkyl;
alkyl-aryl; and aryl; polyoxyalkylene chains having
from 2 to 20 repeating, wherein the polyoxyalkylene
chain is covalently bound to at least one group
selected from: SO₃⁻; CO₂⁻; quaternary ammonium; OH; -
OC1-C20-alkyl; -OC1-C20-alkene; acid amide and ester,
wherein at least one of R₁ and R₂ is the
polyoxyalkylene chain."

The compound of the formula depicted above is referred
to as the bis-azo dye in the following.

- IV. In the impugned decision (page 10, last paragraph), the opposition division concluded that a *"process for preparation of the bis-azo dyes falling in the scope of claim 1 has not been disclosed in a manner sufficiently clear and complete that it can be carried out by the skilled person in the art"*.
- V. In its statement of grounds of appeal and further letters, the appellant contested the opposition division's reasoning and corroborated its submissions by filing documents A021 to A030 (denoted D21 to D30 by the appellant).
- VI. In its reply to the grounds of appeal and further letters, the opponent ("respondent") agreed with the opposition division's conclusion. It also submitted document A031 (denoted D31 by the respondent).
- VII. The parties were summoned to oral proceedings as per their request. The board issued a communication pursuant to Article 15(1) RPBA 2020 in preparation for the oral proceedings.
- VIII. Oral proceedings before the board were held by videoconference on 4 July 2023 in the presence of the appellant and the respondent.
- IX. The parties' requests relevant to the decision were as follows.

The appellant requested:

- that the decision under appeal be set aside and the patent be maintained as granted
- alternatively, that the patent be maintained as amended on the basis of the claims of any of

auxiliary requests 1 to 5 submitted with the statement of grounds of appeal

- that documents A021 to A030 be admitted into the proceedings and
- that document A031 not be admitted into the proceedings unless A021 to A030 are admitted.

The respondent requested:

- that the appeal be dismissed, implying that the opposition division's decision to revoke the patent be upheld
- that documents A021 to A030 and the appellant's submissions in paragraphs [9] and [12] of the statement of grounds of appeal not be admitted into the proceedings and
- that document A031 be admitted into the proceedings in the event that A021 to A030 are admitted.

X. As regards the parties' submissions relevant to the present decision, reference is made to the reasons for the decision provided below.

Reasons for the Decision

Admittance of documents A021 to A030

1. With its statement of grounds of appeal the appellant filed documents A021 to A030 to corroborate its submissions regarding sufficiency of disclosure.

A021 is an expert's declaration on the synthesis of mono- and bis-azo dyes.

A022 to A028 and A030 are book extracts on the chemistry of azo dye and electrophilic aromatic substitutions.

A029 is a patent application related to a coloured polymer comprising an azo dye functional group.

2. The respondent requested that documents A021 to A030 not be admitted into the proceedings.
3. As set out above, documents A021 to A030 were submitted with the statement of grounds of appeal. The admittance of these documents is governed by Article 12(4) RPBA 2007, which applies to the case in hand as the statement of grounds of appeal was filed before the date of the entry into force of RPBA 2020; see Article 25(2) RPBA 2020.

Under Article 12(4) RPBA 2007, the board has the power to hold inadmissible *inter alia* facts and evidence which could have been presented in the proceedings before the opposition division even though they were filed with the statement of grounds of appeal.

4. The board concurs with the respondent that documents A021 to A030 could and should have been filed before the opposition division for the following reasons.
 - 4.1 In response to the opposition division's preliminary opinion in its summons, the respondent provided submissions dated 8 March 2019 which raised doubts with respect to sufficiency of disclosure, and filed document D11 supporting these submissions. More specifically, the respondent submitted that the patent did not contain any disclosure regarding the

preparation of the bis-azo dye of claim 1 as granted (point 1.4 of the letter). This lack of information on how the bis-azo dye could be prepared thus needed to be supplied by the common general knowledge (point 1.7 of the letter). However, the common general knowledge did not provide the skilled person with any information that would allow the claimed compound to be prepared (point 1.21 of the letter). The respondent also referred to documents D6 and D11 and concluded that it was unable to obtain the bis-azo dye of claim 1 as granted (point 1.36 of the letter). D11 includes an experiment similar to the process disclosed in example 1 of D6. The appellant relied on D6 to show that the bis-azo dye of claim 1 as granted could be obtained as shown by example 1 of D6.

- 4.2 In its submissions dated 8 March 2019, the respondent also commented on the relevance of document D8 (points 1.38 to 1.56 of the letter). The appellant had submitted D8 to show that the bis-azo dye of claim 1 as granted could have been obtained in a one-pot synthesis starting from the starting material of example 1 of D6.
- 4.3 In reply to the respondent's letter dated 8 March 2019, the appellant filed, with the letter of 5 April 2019, submissions regarding sufficiency of disclosure (paragraphs [10] to [29]) and, *inter alia*, documents D13 to D17. D13 to D17 were filed to support the assertion that the manufacture of bis-azo products was described in the prior art (paragraphs [14] and [15] of the letter). The appellant (paragraphs [17] to [21]) also commented on the experimental tests provided by the respondent in D11.
- 4.4 There is thus no reason why the appellant could not have filed documents A021 to A030 in its letter of

5 April 2019 to complete the submissions made with regard to sufficiency of disclosure.

- 4.5 The appellant submitted that the opposition division's preliminary opinion in the annex to the summons had been positive regarding sufficiency of disclosure. It was not until the oral proceedings that the opposition division had concluded that the requirements of sufficiency of disclosure were not met. Documents A021 to A030 were filed in response to the opposition division's change of mind, which could not have been foreseen before the hearing.
- 4.6 The board does not agree. An objection of sufficiency of disclosure regarding the process for preparing the bis-azo dyes defined in claim 1 as granted had been raised in the notice of opposition (point 4.1). The opposition division's preliminary opinion in its summons to attend oral proceedings did state that the skilled person could prepare the bis-azo dyes defined in claim 1 as granted (point 6.1 on pages 2 and 3 of the annex to the summons). However, as set out above, on 8 March 2019, the respondent filed further submissions disputing the opposition division's preliminary opinion on sufficiency of disclosure and document D11 supporting the submissions. On 5 April 2019 the appellant replied to the respondent's submissions and filed documents D13 to D17. The board notes that the opposition division concluded in its decision (point c), pages 8 to 10) that D6 in combination with the common general knowledge represented by D1, D7 and D13 to D17 did not disclose the process for preparing the bis-azo dye of claim 1 as granted in a manner sufficiently clear and complete. The decision was thus based on submissions made by the parties before the oral proceedings, not during them.

- 4.7 Thus the appellant could have foreseen that the opposition division might change its mind on sufficiency of disclosure on the basis of the respondent's submissions dated 8 March 2019, to which the appellant had replied.
5. In view of the above, documents A021 to A030 could and should have been filed before the opposition division. Therefore, the board decided not to admit documents A021 to A030 into the appeal proceedings pursuant to Article 12(4) RPBA 2007.

Admittance of A031

A031 is a document submitted by the respondent in a further letter dated 3 August 2021. It is an expert's declaration reviewing the documents cited in A021.

The respondent requested that document A031 be admitted into the proceedings in the event that A021 to A030 were admitted. Since the board decided not to admit documents A021 to A030 into the appeal proceedings, there was no need for the board to decide on the admittance of A031 into the appeal proceedings.

Admittance of the appellant's submissions in paragraphs [9] and [12] of the statement of grounds of appeal

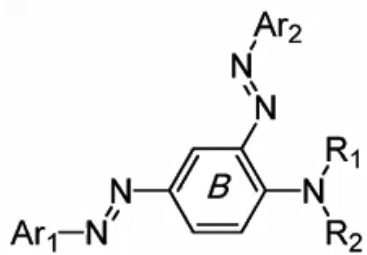
6. In its statement of grounds of appeal (paragraph [9] on pages 4 and 5), the appellant submitted, with regard to sufficiency of disclosure, that the bis-azo dyes of the opposed patent could be prepared in one of two ways. The second way (top of page 5 of the statement of grounds of appeal) involved coupling "an additional azo-thiophene moiety in the ortho position to a -NR₂ aniline derivative like that of Reference Dye 1, already containing an azo-thiophene moiety attached in the para-position". Furthermore, the appellant

submitted, again with regard to sufficiency of disclosure (paragraph [12] of the statement of grounds of appeal), that the opposition division had been wrong to consider the coupling components 26, 27 and 29 disclosed in D1 to be relevant to the opposed patent. These coupling components were not relevant because their structures were based on anilines (-NH₂) and not on compounds bearing an -NR₂ group as in the patent.

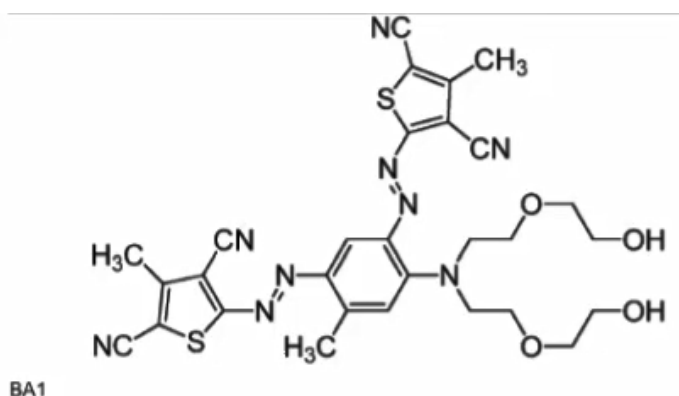
7. The respondent requested that these submissions not be admitted into the proceedings.
8. During the oral proceedings, the board decided to admit the appellant's submissions in paragraphs [9] and [12] of the statement of grounds of appeal into the proceedings. During the oral proceedings, it was found that the subject-matter of claim 1 of each of the main request and auxiliary requests 1 to 5 was not sufficiently disclosed. The decision on sufficiency of disclosure is thus in the respondent's favour, and therefore there is no need for the board to provide reasons for the admittance of these submissions.

Main request - patent as granted - claim 1 - ground for opposition under Article 100(b) EPC - sufficiency of disclosure

9. As set out above, the composition of claim 1 of the main request requires 0.0001 to 1.0 wt% of an alkoxyated bis-azo dye having the following formula:



10. The respondent submitted that the subject-matter of claim 1 of the main request was not sufficiently disclosed. In particular, the respondent argued that there were no examples in the patent/application as filed and no common general knowledge which taught the skilled person how to prepare the bis-azo dye referred to in claim 1 of the main request.
11. The board agrees with the respondent. The application as filed does not give the skilled person any guidance on how to prepare the bis-azo dyes defined in claim 1 of the main request. In particular, example 1 of the application as filed refers to "Dye inventive". "Dye inventive" is compound BA1 having the following formula:



However, the application as filed does not disclose any synthesis for compound BA1, which is a bis-azo dye according to claim 1 of the main request. Nor does the application as filed include any reference to how compound BA1 can be prepared or supplied.

The prior art documents cited in the application as filed on page 1, lines 11 to 17, disclose "*alkoxylated mono-azo for the shading of textiles from domestic laundry detergent products*" and "*alkoxylated bis-azo dyes that have sulphonate groups directly attached to*

the aromatic rings of the dye". They do not disclose either compound BA1 or a bis-azo dye according to claim 1 of the main request.

It is established case law that the claimed invention must be sufficiently disclosed as from the effective date of filing of the application. This disclosure is aimed at the person skilled in the art, who may rely on the common general knowledge to supplement the information contained in the application as filed.

There is, however, no common general knowledge available to supplement the information contained in the application as filed so as to give the skilled person guidance on how to prepare compound BA1 or any bis-azo dye as defined in claim 1 of the main request. Therefore, the skilled person cannot prepare these dyes without undue burden.

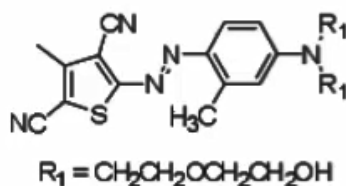
12. The appellant submitted that compound BA1 was a product available from a manufacturer, namely Colour Synthesis Solutions Ltd. The skilled person could have purchased compound BA1 in order to prepare the claimed compositions. The claimed invention was thus sufficiently disclosed.

The board does not agree. First, as submitted by the respondent, the application as filed does not identify compound BA1 as a product available from a specific manufacturer. The manufacturer referred to by the appellant, i.e. Colour Synthesis Solutions Ltd., is not identified in the application as filed either. Lastly, it has not been established that BA1 was a commercial product that the skilled person could have purchased.

13. The appellant further referred to D6, a document cited in D2, which is acknowledged as prior art on page 1 of

the application as filed. The appellant submitted that D6 provided the required information that the skilled person would have followed when preparing compound BA1. The skilled person would have used the mono-azo dye disclosed in example 1 of D6 as a starting material and would have prepared compound BA1 by carrying out an ortho-coupling reaction of a diazonium salt compound.

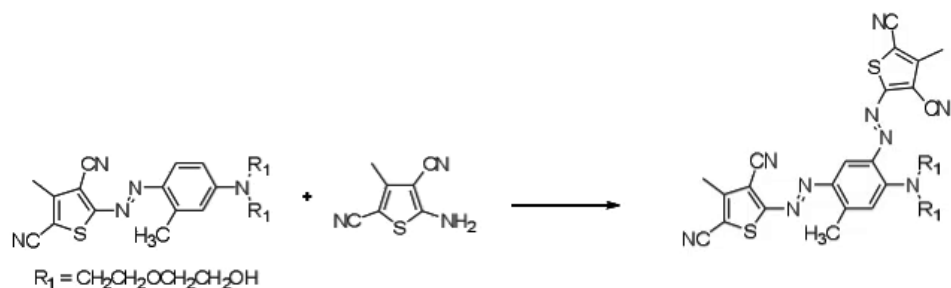
The board disagrees. The application as filed mentions on page 1, line 11, that D2 discloses mono-azo dyes for the shading of textiles from domestic laundry detergent products. D2 (page 32, line 20) refers to D6 for the synthesis of the mono-azo dyes used in D2. D6 relates to the preparation of mono-azo dyes. In particular, example 1 of D6 invoked by the appellant discloses the preparation of the following compound:



According to the appellant, this mono-azo aniline compound represented the starting material for preparing the bis-azo dye BA1.

However, as submitted by the respondent, there is no indication in the application as filed to start from the very specific compound of example 1 of D6 (the mono-azo aniline compound) in order to synthesise compound BA1. The mere reference to D2 on page 1 of the application as filed would not have guided the skilled person to example 1 of D6. For that reason alone, the appellant's submission based on D6 must fail.

14. Furthermore, the board notes that to arrive at compound BA1, an ortho-coupling reaction by diazotisation had to be carried out on the mono-azo aniline compound of D6 as follows:



There is no common general knowledge available on file to show that an ortho-coupling reaction by diazotisation can be performed on the mono-azo aniline compound of example 1 of D6. As reasoned in the impugned decision (page 9, second paragraph), D1 (page 21), which is indisputably representative of the common general knowledge, teaches that aniline compounds 26, 27 and 29 can only be coupled at the para-position. This means that a reaction by diazotisation can only be performed at the para-position of the mono-azo aniline compound. This position is already occupied by a mono-azo functional group and thus the skilled person would not have performed a reaction by diazotisation starting from the mono-azo aniline compound of D6. The same teaching, i.e. diazotisation taking place only at the para-position of an aniline compound, is available from D13 (page 58, compound 31) and D16 (page 9, compound 11). D1, D13 and D16 thus do not teach that a reaction by diazotisation can be performed at the ortho-position of an aniline compound, let alone of the mono-azo aniline compound of example 1 of D6.

15. The appellant further submitted that D15 taught that when the para-position was already occupied, the

diazotisation could take place at the ortho-position of the mono-azo aniline compound disclosed in D6 and compound BA1 could thus be prepared.

The board does not find this submission convincing. D15 (page 471, first sentence of paragraph 1.4) teaches that "substitution is mostly para to the activating group, unless that position is already occupied, in which case ortho substitution takes place". However, as submitted by the respondent, D15 is only concerned with diazotisation reactions of activating groups such as amines and phenols for preparing mono-azo dyes. It is not concerned with the preparation of bis-azo dyes.

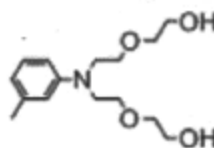
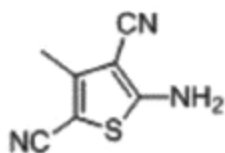
16. The appellant also relied on D17 and submitted that D17 described azo-coupling, mono-azo dyes and bis-azo dyes with azo-coupling at the ortho and para positions. It further submitted that the skilled person would have considered that the diazotisation could take place at the ortho-position of the mono-azo aniline compound disclosed in D6 to provide compound BA1.

The board disagrees for the following reasons. D17 discloses compounds III and IV on page 1817, which are bis-azo dyes. These compounds are prepared from m-phenylene diamine. However, as submitted by the respondent, D17 is not inconsistent with the teaching of D1, which, on page 21, shows that m-phenylene diamine compound 30 may have three possible coupling positions, indicated by the three arrows. The disclosure in D17 is thus in accordance with the general teaching of D1. Therefore, it does not change the fact that on the basis of the teaching of D1 given for aniline compounds 26, 27 and 29, the skilled person would not have considered that the diazotisation could take place at the ortho-position of the mono-azo

aniline compound disclosed in D6 in order to prepare compound BA1.

17. Even if it were accepted, purely for the sake of argument, that the skilled person aiming to produce compound BA1 would have consulted D6, this document in combination with the common general knowledge does not provide, as set out above, the information required for preparing compound BA1, i.e. the information that diazotisation could indeed take place at the ortho-position of the mono-azo aniline compound disclosed in D6 so as to provide compound BA1.
18. Furthermore, the appellant submitted that compound BA1 could be prepared in a one-pot synthesis starting from the metatoluidine derivative used as the starting material in example 1 of D6. A double diazotisation could take place at the para- and ortho-position of the metatoluidine derivative and could yield compound BA1. The appellant relied in this respect on D8 and D18.

The board is not convinced. D8 and D18 are documents submitted by the appellant before the opposition division. D8 is an experimental report for preparing compound BA1. The preparation disclosed in D8 includes the reaction of 2-amino-3,5-dicyano-4-methylthiophene with a metatoluidine derivative (see below), as disclosed in example 1 of D6.



According to D8, the dried solid obtained after the reaction of the above compounds contained dye BA1.

D18 discloses the purification and mass spectra of compound BA1.

However, as submitted by the respondent and set out above, the application as filed does not disclose that the process of example 1 of D6 is suitable for preparing bis-azo dyes. For that reason alone, this submission must also fail.

Moreover, the board agrees with the opposition division (fifth full paragraph on page 9 of the impugned decision) that the combination of D8 with D18 is not convincing since it is not an exact repetition of D6. The solvent used, reaction time and the presence of urea are different as compared with D6.

19. Referring to the case law of the boards of appeal, the appellant further submitted that even if uncertainties were present, the skilled person would have preferred to verify whether the potential solution they had conceived for producing the claimed bis-azo dyes worked, rather than abandon the project because success was not certain. A detailed disclosure was not necessary if the skilled person, who has the common general knowledge at their immediate disposal, was capable of putting the invention into practice without the burden of exercising inventive skill.

These arguments are not convincing either. As set out above, in the current case, on the basis of the information contained in the application as filed and the common general knowledge, there is no solution at all that a skilled person would have conceived for producing the bis-azo dyes defined in claim 1 of the main request.

20. Lastly, the appellant submitted that, in order to prove insufficiency of disclosure, it was incumbent on the respondent to establish that a skilled person would not have been able to carry out the invention. An objection of lack of sufficiency of disclosure presupposed that there were serious doubts, substantiated by verifiable facts. The respondent had not provided any verifiable facts in support of its objection.

The board does not agree for the following reasons. It is established case law that in *inter partes* proceedings the burden to prove insufficiency of disclosure first lies with the opponent (in this case the respondent).

However, when the application as filed does not give any information at all as to how the invention can be put into practice, only a weak presumption exists that the invention is sufficiently disclosed (see e.g. T 3012/18, Reasons 4.6).

In view of the respondent's submissions reported above, the respondent has discharged its initial burden of proof in the case in hand. That means that since then it has been down to the appellant to prove the contrary, i.e. that the invention could be carried out by the skilled person without undue burden. However, for the reasons given above, it has failed to do so.

21. In view of the above, the board concludes that the ground for opposition under Article 100(b) EPC is prejudicial to the maintenance of the patent as granted. Therefore, the main request is not allowable.

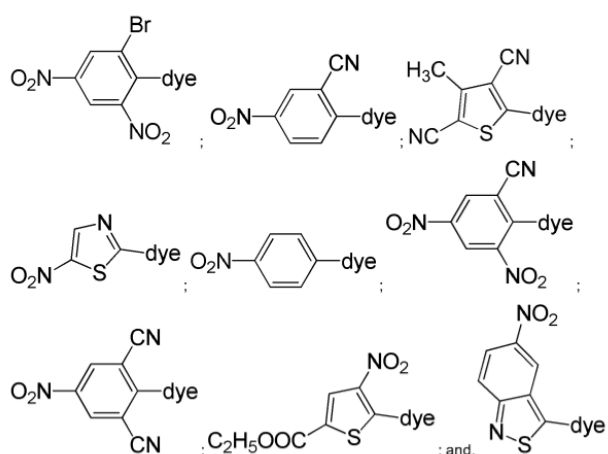
Auxiliary requests 1 to 4 - claim 1 - sufficiency of disclosure under Article 83 EPC

22. Claim 1 of auxiliary request 1 differs from claim 1 as granted (see above) in that the feature "*wherein the B ring is substituted by one or more groups selected from: acid amide; Oalkyl; and, alkyl*" was added at the end of the claim.

As compared with claim 1 of auxiliary request 1, claim 1 of auxiliary request 2 further contains the feature "*wherein Ar₁ and Ar₂ are identical*".

As compared with claim 1 of auxiliary request 2, claim 1 of auxiliary request 3 further contains the feature "*wherein Ar₁ and Ar₂ is substituted by one or more groups selected from: CN; F; Cl; Br; NO₂; CH₃; C₂H₅; OCH₃; OC₂H₅; NHCOCH₃; COOCH₃; COOC₂H₅; OCOCH₃; OCOC₂H₅; and, CH₃SO₂*".

As compared with claim 1 of auxiliary request 2, claim 1 of auxiliary request 4 further contains the feature expressing that Ar₁ and Ar₂ is selected from



23. These restrictions of the subject-matter of claim 1 as granted, as contained in claim 1 of auxiliary requests 1 to 4, do not have any influence on the board's above

observations on the lack of sufficiency of disclosure of the subject-matter of claim 1 of the main request. This was not contested by the appellant at the oral proceedings.

24. Therefore, the board concludes that the subject-matter of claim 1 of each of auxiliary requests 1 to 4 is not sufficiently disclosed. The requirements of Article 83 EPC are not met.

Auxiliary request 5 - claim 1 - sufficiency of disclosure under Article 83 EPC

25. Claim 1 of auxiliary request 5 is a combination of claim 1 of the main request with the passage on page 8, lines 5 to 10 of the application as filed. In other words, claim 1 of auxiliary request 5 limits the dye comprised in the claimed composition to only the dye having the structure of compound BA1 (see above).
26. The appellant submitted that claim 1 of auxiliary request 5 defined a one-way-street situation. It was common general knowledge that para-ortho bis-azo dyes existed. By defining a single compound, claim 1 of auxiliary request 5 enabled the skilled person to carry out the invention.
27. The board does not agree. In the context of the main request, the board concluded that the preparation of, *inter alia*, compound BA1 was not sufficiently disclosed. Since claim 1 of auxiliary request 5 defines a composition comprising this compound, the same reasoning as that given for the main request applies *mutatis mutandis* to claim 1 of auxiliary request 5.
28. It follows that the subject-matter of claim 1 of auxiliary request 5 is not sufficiently disclosed. The requirements of Article 83 EPC are not met.

29. In view of the above, none of the appellant's requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. Schalow

M. Maremonti

Decision electronically authenticated