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Datasheet for the decision of 7 July 2025

Case Number: T 1173/23 - 3.3.03

Application Number: 18721250.1

Publication Number: 3612303

IPC: B01J20/12, A61L15/60, B01J20/26, B01J20/30

Language of the proceedings: EN

Title of invention:
METHOD FOR MAKING WATER-ABSORBING POLYMER PARTICLES HAVING AREAS WITH INORGANIC SOLID PARTICLES AND AREAS SUBSTANTIALLY FREE OF INORGANIC SOLID PARTICLES

Applicant:
The Procter & Gamble Company

Relevant legal provisions:
EPC Art. 83, 84, 123(2), 111
RPBA 2020 Art. 11

Keyword:
Amendments - allowable (yes)
Claims - clarity (yes)
Sufficiency of disclosure - (yes)
Appeal decision - remittal to the department of first instance (yes)

Decisions cited:
G 0002/10

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Case Number: T 1173/23 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 7 July 2025

Appellant: (Applicant)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	Elkington and Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 20 December 2022 refusing European patent application No. 18721250.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	D. Semino
Members:	D. Marquis
	A. Bacchin

Summary of Facts and Submissions

I. The appeal lies against the decision of the examining division refusing European patent application No. 18 721 250.1.

II. Claim 1 of the application as originally filed read as follows:

"1. Method for making water-absorbing polymer particles by providing:

- a first aqueous polymerization solution comprising crosslinkers, polymerizable monomers and/or oligomers and inorganic solid particles, wherein the weight ratio of inorganic solid particles based on the dry solid content of the first aqueous polymerization solution is from 0 to 0.5%,
- a second aqueous solution comprising inorganic solid particles, crosslinkers and either polymerizable monomers and/or oligomers, or crosslinkable polymers wherein the weight ratio of inorganic solid particles based on the dry solid content of the second aqueous solution is more than 0.5%, and

wherein the average closest distance between two neighboring crosslinkers (R_{XL}) from the first aqueous polymerization solution or from the second aqueous polymerization solution for a specific X-load of the precursor water-absorbing polymer particle is calculated via the formula below:

$$Rxl = \left(\frac{\left(\frac{1}{rho\_dry} + \frac{x\_L}{rho\_liq} \right)}{N_A \cdot \sum_i \frac{w\_xl_i}{Mr\_CXL_i}} \right)^{\frac{1}{3}} \quad \text{(I)}$$

with x_L corresponding to the amount of liquid absorbed in the water-absorbing polymer particle in $g_{liq}/g_{water\text{-}absorbing\ polymer\ particle}$,

rho_liq corresponding to the density at room temperature of the liquid that swells the water-absorbing polymer particle (generally saline of 0.9%w NaCl) in g/cm^3,

rho_dry corresponding to the true density of the dry precursor water-absorbing polymer particle in g/cm^3,

Mr_CXL corresponding to the molar mass of the crosslinkers from the first aqueous polymerization solution or from the second aqueous solution, respectively, in g/mol,

w_xl corresponding to the weight ratio of crosslinkers in dry water-absorbing polymer particle from the first aqueous polymerization solution or from the second aqueous solution, respectively,

N_A corresponding to the Avogadro's number in mol^{-1},

wherein the average closest distance between two neighboring crosslinkers (R_{XL}) from the first aqueous polymerization solution or from the second aqueous solution at 20 g/g X-load of the water-absorbing polymer particle obtained via the formula above is at least as high as an average size of the inorganic solid particles or higher than an average size of the inorganic solid particles in the respective solution, and

wherein the average closest distance between two neighboring crosslinkers (R_{XL}) from the first aqueous polymerization solution or from the second aqueous solution at 20 g/g X-load of the water-absorbing polymer particle is from 3 to 100 nm,

the method comprising the steps of:

a) polymerizing the first aqueous polymerization solution to obtain precursor water-absorbing polymer particles,

b) mixing the precursor water-absorbing polymer particles with the second aqueous solution, and

c) polymerizing the mixed solution if the mixed solution comprises polymerizable monomers and/or oligomers or crosslinking the mixed solution if the mixed solution comprises crosslinkable polymers to obtain the water-absorbing polymer particles".

III. In the decision under appeal it was concluded, as far as relevant to the present decision, that claim 1 of the main request filed on 7 October 2022 did not find a basis in the application as originally filed and that it lacked clarity and sufficiency of disclosure.

IV. The applicant (appellant) lodged an appeal against the decision of the examining division.

V. Oral proceedings before the Board were held on 7 July 2025.

VI. The final requests of the appellant were as follows:

The appellant requested that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of the main request or any of auxiliary requests 1 to 19, all filed with the statement of grounds of appeal.

Claim 1 of the main request, which corresponded to the main request on which the decision under appeal was based, read as follows (additions in bold, deletions in strikethrough with respect to claim 1 as originally

filed):

"1. Method for making water-absorbing polymer particles by providing:

- a first aqueous polymerization solution comprising crosslinkers, polymerizable monomers and/or oligomers and inorganic solid particles, wherein the weight ratio of inorganic solid particles based on the dry solid content of the first aqueous polymerization solution is from **greater than** 0 to 0.5%,
- a second aqueous solution comprising inorganic solid particles, crosslinkers and either polymerizable monomers and/or oligomers, or crosslinkable polymers wherein the weight ratio of inorganic solid particles based on the dry solid content of the second aqueous solution is more than 0.5%, and

wherein the average closest distance between two neighboring crosslinkers, ~~(R_{XL})~~ **in precursor water-absorbing polymer particle obtained** from **polymerizing** the first aqueous polymerization solution ~~or from the second aqueous polymerization solution~~ for a specific X-load of **the precursor** ~~a~~ water-absorbing polymer particle is calculated via the formula below:

$$Rxl = \left(\frac{\left(\frac{1}{rho\_dry} + \frac{x\_L}{rho\_liq} \right)}{N_A \cdot \sum_i \frac{w\_xl_i}{Mr\_CXL_i}} \right)^{\frac{1}{3}} \quad \text{(I)}$$

with **the X-load**, x_L, corresponding to the amount of liquid absorbed in the **precursor** water-absorbing polymer particle in $g_{liq}/g_{water\text{-}absorbing\ polymer\ particle}$, **the liquid being saline of 0.9%w NaCl in g/cm^3**,

rho_liq corresponding to the density at room temperature of the liquid that swells the **precursor** water-absorbing polymer particle ~~(generally saline of 0.9%w NaCl) in g/cm^3~~,

rho_dry corresponding to the true density of the dry **precursor** water-absorbing polymer particle in g/cm^3,

Mr_CXL$_{\mathbf{i}}$ corresponding to the molar mass of the **ith** crosslinker~~s~~ from the first aqueous polymerization solution ~~or from the second aqueous solution, respectively,~~ in g/mol,

w_xl$_{\mathbf{i}}$ corresponding to the weight ratio of **the ith** crosslinker~~s~~ in **the** dry **precursor** water-absorbing polymer particle from the first aqueous polymerization solution ~~or from the second aqueous solution, respectively~~,

N_A corresponding to the Avogadro's number in mol^{-1},

wherein the **first aqueous polymerization solution includes said inorganic solid particles and the** average closest distance between two neighboring crosslinkers, ~~(~~R_{XL}~~)~~, from the first aqueous polymerization solution ~~or from the second aqueous solution~~ at 20 g/g X-load of the **precursor** water-absorbing polymer particle obtained via the formula above **is from 3 to 100 nm and** is at least as high as an average size of the inorganic solid particles or higher than an average size of the inorganic solid particles in the ~~respective~~ **first aqueous polymerization** solution, **the average size of the inorganic solid particles being equal to the value of the particle size D50 according to the dynamic light scattering test method described in the article: Karpovich, A et al, "Determination of dimensions of exfoliating materials in aqueous suspensions", MethodsX, 2016, 3, 19-24,** ~~and~~

~~wherein the average closest distance between two neighboring crosslinkers (R_{XL}) from the first aqueous polymerization solution or from the second aqueous solution at 20 g/g X-load of the water-absorbing polymer particle is from 3 to 100 nm,~~

the method comprising the steps of:

a) polymerizing the first aqueous polymerization solution to obtain **said** precursor water-absorbing polymer particles,

b) mixing the precursor water-absorbing polymer particles with the second aqueous solution, and

c) polymerizing the mixed solution if the mixed solution comprises polymerizable monomers and/or oligomers or crosslinking the mixed solution if the mixed solution comprises crosslinkable polymers to obtain the water-absorbing polymer particles".

VII. The appellant's submissions, in so far as they are pertinent, may be derived from the reasons for the decision below and concerned the objections under Articles 123(2), 84 and 83 EPC against claim 1 of the main request dealt with in the decision under appeal.

Reasons for the Decision

Main request filed on 7 October 2022

1. Amendments

1.1 The examining division concluded in the decision under appeal that the amendments in claim 1 of the main request introduced subject-matter that extended beyond the content of the application as originally filed, contrary to the requirements of Article 123(2) EPC. The examining division more specifically came to the conclusion (i) that the term "precursor water-absorbing

polymer particles" in relation to the formula (I) in claim 1 did not find a basis in the application as originally filed and (ii) that there was also no basis for the modification of the range defining the weight ratio of inorganic solid particles in the first aqueous polymerization solution to "greater than" 0 to 0.5%.

1.2 With regard to the first issue (i), the examining division considered that the definition of the average closest distance between two neighboring crosslinkers (R_{XL}) by its formula (I) was only disclosed in combination with the water-absorbing polymer particles produced in step (c) of the method of claim 1 (decision under appeal, section 8.1.1). There was also no direct and unambiguous disclosure of formula (I) being applied to the precursor water absorbing polymer particles produced in step (a) of the method in the application as originally filed.

1.3 The standard for assessing compliance with the requirements of Article 123(2) EPC is the standard set out in decision G 2/10 (OJ EPO 2012, 376, Reasons 4.3), also known as the gold standard. Amendments are only permitted within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the application as filed. The subject-matter of an amended claim must be at least implicitly disclosed to the skilled person, using common general knowledge, in the application as filed (ibid., Reasons 4.7). After the amendment, the skilled person may not be presented with new technical information (ibid., Reasons 4.5.1).

1.4 Claim 1 as originally filed defines a method for making water-absorbing polymer particles. The method comprises

three steps:
a) polymerizing the first aqueous polymerization solution comprising crosslinkers, polymerizable monomers and/or oligomers and inorganic solid particles, to obtain precursor water-absorbing polymer particles,
b) mixing the precursor water-absorbing polymer particles with a second aqueous solution comprising inorganic solid particles, crosslinkers and either polymerizable monomers and/or oligomers, or crosslinkable polymers, and
c) polymerizing the mixed solution if the mixed solution comprises polymerizable monomers and/or oligomers or crosslinking the mixed solution if the mixed solution comprises crosslinkable polymers to obtain the water-absorbing polymer particles.

1.5 It is apparent that carrying out the method defined in claim 1 of the application as originally filed results in the formation of polymer particles both in step (a) (from the first aqueous polymerization solution), referred to as precursor water-absorbing polymer particles, and in step (c) (after mixing with the second aqueous solution and further reaction), referred to as water-absorbing polymer particles.

1.6 Claim 1 of the application as originally filed further defines "the average closest distance between two neighboring crosslinkers (R_{XL}) from the first aqueous polymerization solution or from the second aqueous solution" meaning the average closest distance between two neighboring crosslinkers in the precursor water-absorbing polymer particles from step (a) or the water-absorbing polymer particles issued from step (c) respectively. The "specific X-load of a water-absorbing polymer particle" in the definition of formula (I) thus

refers respectively to the precursor water-absorbing polymer particles issued from step (a) when R_{XL} is meant to characterize the first aqueous polymerization solution and to water-absorbing polymer particles issued from step (c) when R_{XL} is meant to characterize the second aqueous polymerization solution.

1.7 The wording of claim 1 as originally filed therefore encompasses two alternative conditions applying to the average closest distance between two neighboring crosslinkers (R_{XL}), the first one characterizing the precursor water-absorbing polymer particles issued from step (a) and the second one characterizing the water-absorbing polymer particles issued from step (c).

1.8 Claim 1 of the main request was amended so as to only limit the average closest distance between two neighboring crosslinkers (R_{XL}) of the precursor water-absorbing polymer particles. Consequently the parameters used in formula (I) defining R_{XL}, namely the X-load x_L, the density of the swelling fluid rho_liq, the true density rho_dry and the weight ratio w_xl_i have all been amended accordingly to reflect that limitation. Claim 1 of the main request was therefore modified in that the alternative condition set for the average closest distance between two neighboring crosslinkers (R_{XL}) of the water-absorbing polymer particles issued from step (c) was deleted and the wording of claim 1 was brought in line with that deletion. Claim 1 of the main request still finds a clear and unambiguous basis in claim 1 as originally filed, so that the deletion of one of two equally disclosed alternatives does not contravene the requirements of Article 123(2) EPC.

1.9 With regard to the second issue (ii), the question was whether the application as originally filed provided a basis for the limitation of the numerical range defining the weight ratio of inorganic solid particles in the first aqueous polymerization solution to "greater than" 0 to 0.5%.

1.10 Claim 1 of the application as originally filed defines the range of weight ratio of inorganic solid particles in the first aqueous polymerization solution as being from 0 to 0.5%. The range in inorganic solid particles in the first aqueous polymerization solution is addressed on page 18, lines 22 to 31 of the application as originally filed. The same broad range of 0 to 0.5% is disclosed therein and then, after some further information on the particle content, it is specified that "Alternatively, the first aqueous polymerization solution may comprise no inorganic solid particles, i.e. free of inorganic solid particles". The skilled person would understand from that passage that the application as originally filed encompassed embodiments in which inorganic solid particles were present in the first aqueous polymerization solution and embodiments in which inorganic solid particles were not present in the first aqueous polymerization solution (weight ratio of 0%). This would mean that the amendment in claim 1 of the main request only excludes one of the two alternatives already implied by the wording of the passage on page 18, lines 30 and 31 of the application as originally filed. This amendment is also in line with the limitation of the conditions on R_{XL} (which include a reference to the average size of the inorganic solid particles) to the first embodiment. The amendment "greater than 0 to 0.5%" in claim 1 of the main request therefore finds a basis in the application

as originally filed.

1.11 It follows that the requirements of Article 123(2) EPC are met.

2. Clarity

2.1 The examining division came to the conclusion that claim 1 of the main request lacked clarity for the reasons set out in sections 9.2 (lack of clarity of dry solid content) and 9.3 (lack of clarity of the terms "rho_dry" and "w_xl_i") of the decision under appeal.

2.2 It was in particular concluded that the characterization of the first and second aqueous solutions by their "dry solid content" in claim 1 of the main request lacked clarity as the first and second aqueous solutions could contain liquid components in addition to the solvents and it was not clear whether these components formed part of the dry solid content (decision under appeal, section 9.2.2).

2.3 The appellant has however shown in appeal that the use of the term "dry" in the context of a polymer solution was uncontroversial. According to the definition found e.g. at https://en.wikipedia.org/wiki/Dry_basis:

"Dry basis is an expression of the calculation in chemistry, chemical engineering and related subjects, in which the presence of water (and/or other solvents) is neglected for the purposes of the calculation. Water (and/or other solvents) is neglected because addition and removal of water (and/or other solvents) are common processing steps, and also happen naturally through evaporation and condensation; it is frequently useful to express compositions on a dry basis to remove these

effects".

2.4 The Board has no doubt that this definition corresponds to the understanding of the skilled person. Thus, in the scenario in which only water is used as the solvent in the aqueous solution, the dry solid content would include everything but water, and when water and other solvent(s) are used, the dry solid content would include everything but water and the other solvent(s). The Board, according to that definition, comes to the conclusion that the wording "dry solid content" in claim 1 of the main request meets the requirements of Article 84 EPC.

2.5 The examining division considered in their decision that the parameters "rho_dry" and "w_xl_i", which corresponded in operative claim 1 to the true density of the dry precursor water-absorbing polymer particle and to the weight ratio of the ith crosslinker in the dry precursor water-absorbing polymer particle from the first aqueous polymerization solution, lacked clarity (decision under appeal, section 9.3). In particular, the lack of clarity arose from the fact that "rho_dry" and "w_xl_i", which could only be determined on produced particles, had to be known in advance as they were also involved in the definition of the average closest distance between two neighboring crosslinkers (R_{XL}) of these particles.

2.6 The appellant showed that precursor polymer particles could be obtained by performing step a) of claim 1 and could be used to determine their true density and the weight ratio of the ith crosslinker in the dry precursor water-absorbing polymer particles. With that information, the skilled person could easily determine the average closest distance between two neighboring

crosslinkers (R_{XL}) of the precursor water-absorbing polymer particles by applying formula (I) and unambiguously conclude whether the particles were according to claim 1 or not by comparing R_{XL} to the range of 3 to 100 nm and to the average size of the inorganic solid particles used in the first aqueous solution. In this respect there was no ambiguity in the definition "rho_dry" and "w_xl_i" and their use in formula (I). Since the appellant showed that the skilled person was in the position to determine without ambiguity whether the precursor water-absorbing polymer particles were according to claim 1 or not and consequently whether the method fell under claim 1, the Board cannot see any lack of clarity deriving from that issue.

2.7 Claim 1 of the main request therefore meets the requirements of Article 84 EPC.

3. Sufficiency of disclosure

3.1 The examining division came to the conclusion that in order to perform the method for making the water-absorbing polymer particles of claim 1 of the main request while in particular fulfilling the conditions related to formula (I), several selections and assumptions regarding choice of the components of the first and second aqueous solution components had to be made by the skilled person for which there was no sufficient guidance in the description (decision under appeal, sections 10.1.1 to 10.2.2).

3.2 Claim 1 pertains to a method for making water-absorbing polymer particles by comprising the steps of a) polymerizing the first aqueous polymerization solution to obtain precursor water-absorbing polymer particles,

b) mixing the precursor water-absorbing polymer particles with a second aqueous solution, and c) polymerizing the mixed solution if the mixed solution comprises polymerizable monomers and/or oligomers or crosslinking the mixed solution if the mixed solution comprises crosslinkable polymers to obtain the water-absorbing polymer particles.

3.3 The first aqueous polymerization solution is defined in claim 1 as one comprising crosslinkers, polymerizable monomers and/or oligomers and inorganic solid particles, wherein the weight ratio of inorganic solid particles based on the dry solid content of the first aqueous polymerization solution is from greater than 0 to 0.5%. The passage on page 14, line 25 to page 19, line 2 of the description provides lists for the components of the first aqueous polymerization solution leading to the precursor water-absorbing polymer particles in step a). Among these components, the skilled reader finds guidance as to the crosslinkers, polymerizable monomers and/or oligomers and inorganic solid particles to be employed in the first aqueous polymerisation solution.

3.4 Claim 1 further sets out that the average closest distance between two neighboring crosslinkers (R_{XL}) in the precursor water-absorbing polymer particles obtained from polymerizing the first aqueous polymerization solution for a specific X-load of the precursor water-absorbing polymer particle is in a range of from 3 to 100 nm and at least as high as or higher than the average size of the inorganic solid particles of the inorganic solid particles in the first aqueous polymerization solution. The average size of the inorganic solid particles of the inorganic solid particles in the first aqueous polymerization solution

is chosen by the operator of the method, together with the other components of the first aqueous polymerization solution. It is then to be determined whether the skilled person would be able to set the average closest distance between two neighboring crosslinkers in the precursor water-absorbing polymer particles so that these conditions are satisfied.

3.5 The average closest distance between two neighboring crosslinkers, (R_{XL}) is defined in claim 1 via the formula:

$$Rxl = \left(\frac{\left(\frac{1}{rho\_dry} + \frac{x\_L}{rho\_liq} \right)}{N_A \cdot \sum_i \frac{w\_xl_i}{Mr\_CXL_i}} \right)^{\frac{1}{3}} \quad \text{(I)}$$

with the X-load, x_L, being set in claim 1 as 20 g/g of liquid absorbed in the precursor water-absorbing polymer particle,

the liquid being saline of 0.9%w NaCl in g/cm^3 which also sets its rho_liq corresponding to the density at room temperature of the liquid that swells the precursor water-absorbing polymer particle,

rho_dry corresponding to the true density of the dry precursor water-absorbing polymer particle in g/cm^3,

Mr_CXL_i corresponding to the molar mass of the ith crosslinker from the first aqueous polymerization solution in g/mol,

w_xl_i corresponding to the weight ratio of the ith crosslinker in the dry precursor water-absorbing polymer particle from the first aqueous polymerization solution and N_A corresponding to the Avogadro's number in mol^{-1}.

3.6 Among the parameters used in that formula, the X-load is set to the predefined value of 20g/g according to claim 1 and the density at room temperature of the liquid that swells the precursor water-absorbing polymer particle and the Avogadro's number are physical constants. It is thus apparent that Formula (I) only involves three variables relating to the preparation of the precursor water-absorbing polymer particle obtained in step (a), namely the molar mass Mr_CXL_i of the ith crosslinker, its weight ratio in the dry precursor water-absorbing polymer particle w_xl_i and the true density of the dry precursor water-absorbing polymer particle rho_dry. The appellant convincingly showed in appeal that the true density of the water-absorbing polymer would not present the skilled person with any difficulty in terms of carrying out the claimed invention. It was in particular shown that realistic variations of the true density were not enough to exert any significant influence on the average closest distance between neighboring crosslinkers. For illustration, it was calculated that sodium polyacrylic acid crosslinked with polyethylene glycol diacrylate (PEG-DA) having a molecular weight of 700 g/mol and a weight ratio of PEG-DA in the polymer particle of 0.0005 would lead to a value of R_{XL} of 36.4 nm if the true density of the polymer particle was 1.2 g/cm^3, and of 36.2 nm if the true density of the polymer particle was doubled at 2.4 g/cm^3 (statement of grounds of appeal, page 5, sixth full paragraph). It was then shown that, even if the value of the true density of the polymer particles obtained in step (a) doubles, its impact on R_{XL} is minimal. Moreover, looking at formula (I) and considering that the x_L value is fixed at 20, this is considered mathematically correct also for other crosslinkers and conditions. Furthermore, the example of the appellant shows that setting the

molecular weight and the amount of crosslinker in the first aqueous polymerization solution according to a reasonable choice leads to a value of R_{XL} well within the range of from 3 to 100 nm so that the Board is also satisfied that a skilled person, by varying the molecular weight and the amount of crosslinker, would be able to adjust R_{XL} within the range of 3 to 100 nm. It is, moreover, clear form the formula how the molecular weight and the content of crosslinkers should be varied in case the conditions were not met and the skilled person needed to increase or decrease the value of R_{XL}.

3.7 Once the precursor water-absorbing polymer particles are obtained from step a) with the conditions on R_{XL} satisfied, the Board has no doubt that a skilled person would be in the position to also perform steps b) and c) involving mixing the precursor water-absorbing polymer particles with the second aqueous solution, and polymerizing the mixed solution if the mixed solution comprises polymerizable monomers and/or oligomers or crosslinking the mixed solution if the mixed solution comprises crosslinkable polymers to obtain the water-absorbing polymer particles. Also the examining division did not express any doubt in this respect. The Board therefore comes to the conclusion that the skilled person would find the necessary guidance in the application as originally filed and in their common general knowledge to perform the method of claim 1 of the main request. Claim 1 of the main request therefore meets the requirements of sufficiency of disclosure.

4. Remittal (Article 111(1) EPC and Article 11 RPBA)

4.1 The appellant requested the remittal of the case to the examining division for further prosecution. The present

main request was filed on 7 October 2022 together with arguments on novelty and inventive step in view of documents D1-D4 which have not yet been considered by the examining division. The lack of examination of the patentability requirements of novelty and inventive step for the subject-matter at stake constitutes special reasons for remitting the case to the examining division within the meaning of Article 11 RPBA. The Board therefore finds it appropriate to remit the case to the examining division for further prosecution on the basis of the main request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the examining division for further prosecution.

The Registrar: The Chairman:

D. Hampe D. Semino

Decision electronically authenticated