

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N^o du recours : T 532/88 - 3.3.1

Anmeldenummer / Filing No / N^o de la demande : 81 305 961.5

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 055 100

Bezeichnung der Erfindung: Lavatory cleansing blocks
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : C11D 17/00

ENTSCHEIDUNG / DECISION

vom / of / du 16 May 1990

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet : Jeyes Group Limited

Einsprechender / Opponent / Opposant : Henkel KGaA

Stichwort / Headword / Référence : Cleansing blocks/JEYES

EPÜ / EPC / CBE Article 56

Schlagwort / Keyword / Mot clé : "Inventive step (denied)"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

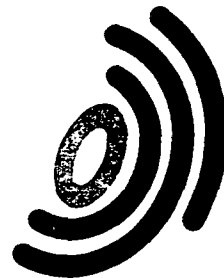
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European Patent
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Boards of Appeal

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Chambres de recours



Case Number : T 532/88 - 3.3.1

D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 16 May 1990

Appellant :
(Proprietor of the patent) Jeyes Group Limited
Brunel Way
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Representative :
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Respondent :
(Opponent) Henkel KGaA
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Representative :

Decision under appeal : Decision of Opposition Division of the European Patent
Office dated 31 August 1988 revoking European patent
No. 0 055 100 pursuant to Article 102(1) EPC.

Composition of the Board :

Chairman : K.J.A. Jahn
Members : R.W. Andrews
R. Schulte

Summary of Facts and Submissions

- I. The mention of the grant of European patent No. 0 055 100 in respect of European patent application No. 81 305 961.5, filed on 18 December 1981 and claiming priority of 18 December 1980 from a prior application filed in the United Kingdom, was announced on 10 October 1984 (cf. Bulletin 84/41). The only independent claim reads as follows:
- "A lavatory cleansing block comprising a shaped body (1) formed from a slow-dissolving cleaning composition containing at least one surface active agent and a bleach tablet (2) comprising a bleaching agent, the bleach tablet being embedded in or adhered to the shaped body."
- II. On 8 July 1985 a notice of opposition was filed requesting the revocation of the patent on the ground that its subject-matter did not involve an inventive step. The opposition was supported *inter alia* by
- (2) GB-A-1 538 857 and
(4) FR-A-977 194.
- III. By its decision of 31 August 1988 the Opposition Division revoked the patent. In view of the experimental evidence on file, the Opposition Division considered that certain mixtures of components permitted the manufacture of unitary toilet blocks, whereas with other ingredients a reaction occurred rendering the formation of such blocks impossible. In the latter case the separation of the bleaching agent from the other components was obvious in the light of the disclosure of document (4). In the former situation, the Opposition Division concluded that, in the absence of an unexpected technical effect, the subject-matter of Claim 1 could not be regarded as an inventive

solution to a technical problem encountered on using known forms of lavatory cleansing blocks.

- IV. An appeal was lodged against this decision on 24 October 1988 and the prescribed fee duly paid. In the statement of grounds of appeal filed on 30 December 1988, the Appellants argued that the disputed patent offers a solution to the widespread and unpredictable problem of reliably and reproducibly formulating lavatory cleansing blocks containing bleaching agents. In the Appellants' view the invention involves not only the provision of a solution to a problem but the identification and appreciation that a problem existed. The Appellants also submitted that the Opposition Division's separation of the situation was artificial in that one cannot predict which situation will apply.
- V. In their observation in reply the Respondents contended that, if the selected components made it possible to prepare a unitary block in accordance with the prior art process, there is no reason to manufacture a heterogeneous product. In the absence of a positive technical effect, the division of the block into two parts must be regarded as an aesthetic creation. However, if a unitary product cannot be prepared from the desired components because they react with one another, the skilled person would obviously separate them and produce a heterogeneous product. Whether a unitary block can be prepared from the desired ingredients can be determined by routine experimentation. In any case the division of the product into two parts in accordance with the disputed patent is not inventive.

Furthermore, the problem of incompatibility of bleaching agents with the components of toilet blocks has been

mentioned in document (2). Therefore, the Appellants' assertion that this problem was not known is incorrect.

- VI. The Appellants request that the decision under appeal be set aside and the patent maintained in unamended form. The Respondents requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. The patent in suit relates to lavatory cleansing blocks of the type which are intended to be immersed in the cistern of a lavatory or urinal in non-containerised or free-standing form so that they dissolve in the water in the cistern to release active cleansing ingredients comprising at least one surface active agent and a bleaching agent to the water which is subsequently flushed from the cistern into the lavatory bowl or urinal.
 - 2.1 Document (2), which may be considered as representing the closest state of the art, discloses lavatory cleansing blocks of this type (cf. page 1, lines 10 to 14 and Examples 1, 2 and 4).

However, it was found that lavatory cleansing blocks could not be prepared from some compositions comprising at least one surface active agent and a bleaching agent because their components interact.

Therefore, in the light of this closest prior art the technical problem underlying the disputed patent may be seen in providing lavatory cleansing blocks of the above-

mentioned type, which can be reliably and reproducibly manufactured.

- 2.2 According to the patent in suit this technical problem is solved by a lavatory cleansing block in which a bleaching tablet is embedded in or adhered to a shaped body formed of a slow-dissolving cleaning composition containing at least one surface active agent.

In view of the Examples of the disputed patent and the statement on page 6 of the Statutory Declaration of D.J. Jeffrey first filed on 17 September 1983, the Board is satisfied that this technical problem is credibly solved.

3. Document (2) discloses compositions for cleaning lavatory bowls or urinals comprising from 1 to 95% by weight of a hydrophobic agent or mixture of hydrophobic agents, from 5 to 95% by weight of a hydrophilic surfactant or mixture of surfactants, from 0 to 35% by weight of a disinfectant or mixture of disinfectants which is compatible with the constituents of the composition, and 1 to 15% by weight of a pigment (cf. Claim 1). The compositions may be formed into tablet blocks by conventional methods (cf. page 3, lines 98 to 100). The disinfectant may be a bleaching agent such as a stable chlorine-releasing bleaching agent, for example calcium hypochlorite (cf. page 2, lines 89 to 94).

- 3.1 The technical problem underlying the disputed patent is not mentioned either in this document or any of the other cited documents. In fact, the skilled person employing the compositions disclosed in Examples 1, 2 and 4 to prepare lavatory cleansing blocks by conventional methods would not encounter any difficulties (cf. Experimental Report attached to the Opponent's letter filed on 15 May 1986).

Nevertheless, document (2) contains a clear hint that difficulties may occur in view of the requirement that the disinfectant (bleaching agent) should be compatible with the other ingredients of the composition.

- 3.2 In order to put the teaching of document (2) into practice, the skilled person would have to carry out routine experiments to investigate the compatibility of the ingredients of the claimed compositions. During this routine work the skilled person would certainly discover compositions which give rise to difficulties during processing into unitary lavatory cleansing blocks. Overcoming difficulties which come to light in this manner must be considered to form part of the normal duties of the skilled person. Therefore, in the Board's judgment, no contribution to inventive step is to be seen in the recognition of the above-defined technical problem (cf. T 109/82, OJ EPO 1984, 473, in particular point 5.1 on page 477).
4. It still remains to be examined whether the proposed solution to the technical problem underlying the patent in suit is inventive.
- 4.1 Having recognised the problem, the skilled person would immediately direct his attention to the cause of the undesired reaction between the ingredients of the composition and to means to prevent it. In the light of his general chemical knowledge, the skilled person would realise that the most likely reason for the reaction is the presence of the bleaching agent in the composition and that its separation from the other ingredients would eliminate this undesired reaction. Although the suggestion in document (2) that the pigment may be separated from the bleaching agent by using a two-part container (cf. pge 3, line 68 to 70) cannot be applied directly by the skilled

person interested in manufacturing lavatory cleansing blocks of the free-standing type, nevertheless it is a clear incentive to separate incompatible ingredients.

- 4.2 Document (4), which is in the related field of soaps, discloses soap tablets divided into at least two separate parts. According to this document the two parts of the soap tablet may contain those constituents which should mix or react with each other at the moment of use (cf. right-hand column, lines 3 to 9, Résumé B and Figures 1 to 6).

Since the skilled person could not apply directly the suggestion disclosed in document (2), he would adopt the one used in the neighbouring field as illustrated in document (4) as a means for separating the bleaching agent from the other constituents of the composition.

Therefore, in the Board's judgment, the provision of a lavatory cleansing block of the free-standing type in which a bleaching tablet is embedded in or adhered to a shaped body formed of a slow-dissolving cleaning composition comprising at least one surfactant to solve the problem underlying the disputed patent is obvious. Hence, the subject-matter of Claim 1 does not involve an inventive step.

Claims 2 and 3, which relate to preferred embodiments of the lavatory cleansing blocks in accordance with Claim 1, do not contain any independent inventive features and are, therefore, unallowable in the absence of an acceptable main claim.

Order

For these reasons, it is decided that:

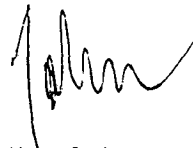
The appeal is dismissed.

The Registrar:



M. Beer

The Chairman:



K. Jahn

*Submitted 15.5.90
RWA*