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D E C I S I O N
of 13 June 2002

Case Number: T 0050/98 - 3.3.6

Application Number: 91306288.1

Publication Number: 0466485

IPC: C11D 17/00

Language of the proceedings: EN

Title of invention:
Detergent compositions

Patentee:
UNILEVER PLC, et al

Opponent:
(01) Henkel Kommanditgesellschaft auf Aktien
(02) The Procter & Gamble Company

Headword:
Detergent tablet/UNILEVER

Relevant legal provisions:
EPC Art. 54, 83, 84, 123

Keyword:
"Auxiliary requests 6, 9 and additional - not admissible: no justification for filing of "additional" requests at a late stage of the proceedings"
"Novelty (main and auxiliary requests 2 to 5, 7 and 8) - no: prior art composition overlapping to a large extent with claimed subject-matter"

Decisions cited:
G 0006/95, T 0794/94, T 0382/97, T 0691/97, T 0026/85

Catchword:
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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0050/98 - 3.3.6

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 13 June 2002

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 21 October 1997 revoking European patent No. 0 466 485 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: P. Krasa
Members: L. Li Voti
C. Holtz

Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division to revoke European patent No. 0 466 485 concerning a detergent composition in tablet form.

II. Two notices of opposition had been filed against the granted patent, wherein the Respondents 01 and 02 (Opponents 01 and 02) sought revocation of the patent inter alia on the grounds of Article 100(a) EPC, in particular because of alleged lack of novelty of the claimed subject-matter.

The oppositions were based inter alia upon the following document:

(6): EP-A-0 355 626.

III. In its decision, the Opposition Division held that

- the claims relating to a tablet with a particulate component (a) comprising at least 20% by weight of anionic surfactant and, additionally, "other material" contravened the requirements of Article 123(2) EPC; and

- the other claimed subject-matter either lacked novelty in the light of document (6), disclosing detergent tablets comprising a particulate component (a) consisting exclusively of anionic surfactant or amounted to a not inventive selection from the teaching of document (6).

Therefore the invention as claimed in the main or in

the auxiliary requests did not fulfil the patentability requirements of the EPC.

IV. An appeal was filed against this decision.

The Appellants and Patent Proprietors filed, with their statement of grounds of appeal, a main request, the claims of which corresponded to those of the first auxiliary request before the Opposition Division, and seven auxiliary requests.

Subsequent to the Respondent's written counter-statements and to the Board's communication of 25 July 2001, the Appellants filed with their letter of 9 May 2002 an amended main request and nine new auxiliary requests.

A further auxiliary request was filed with their letter dated 13 May 2002.

V. During the oral proceedings held before the Board on 13 June 2002 the Appellants withdrew their first auxiliary request and modified their fifth, seventh and eight auxiliary requests by deleting the wording "including particles which are themselves a mixture of ingredients".

VI. Independent claim 1 of the main request had the following wording:

"1. A tablet of compacted detergent powder comprising an anionic detergent-active compound, a detergency builder and optionally other detergent ingredients, wherein the detergency builder comprises alkali metal aluminosilicate, the alkali metal aluminosilicate

forming 5 to 60 wt% (anhydrous basis) of the tablet, characterised in that the tablet is the compaction product of a particulate mixture of:

(a) from 2 to 40 wt% of a first particulate component comprising anionic detergent-active compound and other material and containing at least 20 wt% [of component (a)] of said anionic detergent-active compound,

(b) from 60 to 98 wt% of other ingredients, comprising from 0 to 3 wt% [of component (b)] of anionic detergent-active compound,

wherein component (b) forms a continuous matrix within which component (a) forms discrete domains."

Claim 1 of the second auxiliary request differed from that of the main request insofar as component (a) was **a spray-dried or granulated detergent base powder** or **an anionic detergent-active compound in liquid, waxy or paste form on a particulate carrier material**.

Claim 1 of the third and fourth auxiliary requests differed, respectively, from that of the main and second auxiliary requests insofar as the preamble of the claim specified that **the anionic detergent active material and the detergency builder, respectively, were present in amounts of 4 to 30% and 5 to 80% by weight**.

Claim 1 of the fifth auxiliary request differed from that of the fourth request insofar as component (a), when present as **a spray-dried or granulated detergent base powder, was contained in amounts of from 15 to 40 wt%**.

Claim 1 of the sixth auxiliary request differed from that of the fourth request insofar as component (a) could only be **a spray-dried or granulated detergent base powder, present in amounts of from 15 to 40 wt%.**

Claim 1 of the seventh, eighth and ninth auxiliary requests corresponded otherwise to that of the fourth, fifth and sixth requests, respectively, but differed therefrom insofar as it additionally comprised the limitation that **the detergent tablet had a diametrical fracture stress of at least 5 kPa.**

Finally, the additional request of 13 May 2002 differed from the seventh auxiliary request insofar as the wording of component (a) **did not include any longer the wording "and other material".**

All requests were accompanied by dependent claims relating to specific embodiments of the tablets claimed according to the respective claims 1.

VII. With regard to the admissibility of the requests, the Appellants submitted in writing and at the oral proceedings that:

- the amended requests of 9 May 2002 had been filed as a response to the objections raised in writing by the Respondents or to the issues raised in the Board's communication of 25 July 2001 and the additional request filed with the letter of 13 May 2002 amounted to a further possibility for overcoming the objections raised under Article 123 and 54 EPC;

- all the amended requests could be easily dealt

with by the Respondents during oral proceedings;

- the Board had not set any time limit for replying to its communication of 25 July 2001;

- it was common practice to present additional requests till one month before oral proceedings.

As regards the patentability of the claimed subject-matter, the Appellants submitted inter alia that

- the claimed embodiments relating to a tablet with a particulate component (a) comprising at least 20% by weight of anionic surfactant and, additionally, "other material" found support in the disclosure of the application as filed;

- the teaching of document (6) was confined either to the use of 100% pure anionic particles or to that of particles comprising anionic surfactants as well as other builders and detergent components in an amount, however, exceeding 40% by weight of the tablet and thus not forming only discrete domains within the tablets;

- the generic teaching of the table on page 6 of document (6) could be combined with the specific embodiments reported in the description of this document only by means of hindsight.

VIII. The Respondents argued in writing and orally that:

- the requests filed with the letters of 9 May 2002 or 13 May 2002 were belated and thus not admissible;

- the claims relating to a tablet with a particulate component (a) comprising at least 20% by weight of anionic surfactant and, additionally, "other material" contravened the requirements of Articles 123(2) and (3) EPC;

- the wording of the claims was insufficient as regards clarity and the claimed invention was in this respect not sufficiently disclosed.

As regards novelty the Respondents submitted inter alia that

- the table on page 6 of document (6) outlined suitable concentrations for the particles constituting the tablets and disclosed a range of tablets having features largely overlapping with those claimed in the patent in suit;

- document (6) taught to prepare the particles comprising anionic surfactants by spray-drying or by granulation or by absorbing an anionic surfactant paste onto a carrier material; and

- the tablets disclosed in document (6) had sufficient hardness and thus a diametral fracture stress (hereinafter referred to as DFS) greater than 5 kPa.

IX. The Appellants requested that the decision be set aside and the patent be maintained on the basis of the main request or of the second to ninth auxiliary requests filed with the letter of 9 May 2002 or of the additional request filed with the letter of 13 May 2002.

The Respondents requested that the appeal be dismissed.

X. At the end of the oral proceedings, the Chairman announced the decision of the Board.

Reasons for the Decision

1. *Procedural issues*

1.1 The Appellants have replaced the main and the seven auxiliary requests filed with the statement of grounds of appeal by a new main request and nine new auxiliary requests, all of them filed with a letter dated 9 May 2002, and by one additional request filed with a letter dated 13 May 2002, i.e. about one month before oral proceedings.

Since these requests have been filed as a response to the objections by the Respondents of 18 June 1998 and 14 September 1998 (i.e. more than 4 years later) and to the Board's communication of 25 July 2001 (i.e. about 10 months later), they are late filed.

The first auxiliary request (of 9 May 2002) was no longer pursued by the Appellants at the oral proceedings (see points V and IX above).

It is the established jurisprudence of the Boards of Appeal of the EPO that the parties shall file amendments to the patent documents during appeal proceedings at the earliest possible moment and that the Board may disregard amendments not submitted in good time prior to oral proceedings; auxiliary requests are in particular requested to be filed **as early as**

possible as stated in the Guidance for appellants and their representatives (OJ EPO 1996, 342, paragraph 3.3, last sentence) and the Board has no obligation to fix a final date for the filing of written submissions and thus of additional requests in preparation for oral proceedings (see G 0006/95, OJ EPO 1996, 649, point 5 of the reasons for the decision).

Amendments of **previously filed requests** made at a late stage of the proceedings may be admissible, but only provided they are justified in the particular circumstances of the case. However, auxiliary requests filed without justification for their filing or for their late submission may be disregarded by the Board (see, for example, T 0794/94, not published in OJ EPO, points 2.1.1 to 2.1.3 of the reasons for the decision).

1.2 The Board finds that the main request and the second to fifth and seventh to eighth auxiliary requests are modifications of the main and of the seven auxiliary requests of the statement of the grounds of appeal, filed as a response to objections raised by the Respondents or to issues raised in writing by the Board as regards the clarity of the claims or to the requirements of Article 123(2) EPC.

These amendments thus cannot be considered as taking the Respondents by surprise and could be easily dealt with by the Respondents during the oral proceedings.

The Board thus finds these requests justified in the particular circumstances of the case and thus to be admissible.

1.3 The sixth and the ninth auxiliary request of 9 May 2002

differ from the fifth and eighth auxiliary request, respectively, insofar as the subject-matter of their claim 1 is confined to only one of the possibilities envisaged for component (a) in the other requests, whilst the additional request of 13 May 2002 is a modification of the seventh request of 9 May 2002.

All these requests (which do not find an exact counterpart in the seven auxiliary requests of the statement of the grounds of appeal) were also filed as a response to objections raised by the Respondents and to the issues raised in writing by the Board and contain claims having additional alternative combinations of features not yet covered by the previous requests.

It is established case law of the Boards of appeal of the EPO that there is no right in filing an endless number of auxiliary requests, especially at a late stage of the proceedings (see e.g. T 0794/94, not published in OJ EPO, point 2.1.4 of the reasons).

The question to be answered in this case is thus whether the filing of these **additional** requests was justified in the particular circumstances of the case.

Since the Respondents' objections were known to the Appellants from the replies to the statement of the grounds of appeal, i.e. since more than 4 years, or at the latest since the Board's communication of 25 July 2001, they had sufficient time for filing additional requests taking care of the raised points of discussion.

In the present case, the main request and the second to

fifth and seventh to eighth auxiliary requests filed with the letter of 9 May 2002, which are modifications of the main and of the seven auxiliary requests of the statement of the grounds of appeal, already dealt with all the objections raised so far by the Respondents and the issues raised by the Board (see point 1.2 above).

Since no new objections were raised against these requests there was no apparent justification for the filing of **additional** requests which just contained claims having **additional alternative combinations** of features not yet covered by the previous requests.

The Appellants could also not explain why these additional requests were **needed** as alternative limitation with respect to the previous ones.

If such **alternative additional** requests were admitted there would be no reasonable ground for refusing the filing of a very great number of auxiliary requests, which fact would be contrary to procedural fairness and to the economy of the appeal proceedings.

The Board finds therefore that there was no justification for filing, under the circumstances of this case, **additional** requests at such a late stage of the proceedings (see e.g. T 0382/97, not published in OJ EPO, point 5.3 of the reasons).

The Board finds therefore these additional requests to be inadmissible.

2. *Articles 123, 83, 84 EPC*

The Board is satisfied that the claims of the main and

of the second to fifth, seventh and eighth auxiliary requests comply with the requirements of Articles 84, 83 and 123 EPC.

In particular, the wording "comprising anionic detergent active compound and other material and containing at least 20 wt% ... of said anionic detergent..." in claim 1 of the main request and of the third and seventh auxiliary requests is clear and implicitly supported in the Board's view by the originally disclosed range of 20 to 100% by weight of anionic surfactant and originates from the allowable deletion of the upper limit of the originally disclosed range.

Since all requests moreover fail on other grounds there is no need to give further details for the above findings.

3. *Novelty of the main request*

3.1 Claim 1 of the main request relates to a detergent tablet comprising 2 to 40 wt% of a first particulate component (a) comprising anionic detergent-active compound and other material and containing at least 20 wt% [of component (a)] of said anionic detergent-active compound, and from 60 to 98 wt% of other ingredients, comprising from 0 to 3 wt% [of component (b)] of anionic detergent-active compound, wherein the content of alkali metal aluminosilicate (anhydrous basis) in the tablet amounts to 5 to 60 wt%.

Document (6) relates to detergent tablets containing at least two particulate components wherein a particulate (a) contains the totality of the anionic surfactant and

a particulate (b) contains 75 to 100 wt% of the nonionic surfactant (page 2, lines 22 to 28).

The Appellants have submitted that the teaching of document (6) was confined to the use of either 100% pure anionic particles or of particles comprising anionic surfactants as well as other builders and detergent components in an amount, however, exceeding 40% by weight of the tablet and thus not present as discrete domains within the tablets and did not disclose tablets having features between these two specific embodiments.

3.2 The Board finds, however, that the description of document (6) does not teach that particles comprising anionic surfactants as well as other builders and detergent components should necessarily or preferably be comprised in an amount exceeding 40% by weight of the tablet (page 4, lines 11 to 20), this being the case only for the specific illustrative example on page 7 (see in particular the last table on this page).

Moreover, this document contains on page 6, lines 4 to 35, a table outlining suitable ranges of concentrations for the components of the particulates (a), (b) and (c).

This table is considered by the Board as being illustrative of concentrations which, in the absence of an explicit warning to the contrary, the skilled person would understand to be those to be used for the implementation of the disclosed technical teaching, since the preceding paragraph, bridging pages 5 and 6, and the heading of the table indicate them as suitable examples of concentrations for the disclosed tablets

and not just as a generic teaching not having any relationship to the rest of the description, as argued by the Appellants.

It is thus the view of the Board that the embodiments disclosed in the description preceding this table find their practical implementation not only in the example specified on page 7 but also in said table of page 6.

For example, document (6) teaches on page 4, lines 20 and 21, that the particles (a) comprising the anionic surfactant may not contain any zeolite and any nonionic surfactant. This clear and unambiguous teaching has to be applied to the table of page 6 and by considering the preferred ranges indicated in such table, this results in the disclosure of tablets which comprise 11.5 to 60.5 wt% of particles (a) comprising an anionic detergent surfactant and other components, the rest being made of the particulate materials indicated in this table as (b) and (c) which do not contain any anionic surfactant.

Considering the disclosed lower concentration of particles (a) of 11.5% by weight and the preferred content of anionic surfactants indicated in that table of from 6.5 to 15 wt% of the whole tablet, the amount of anionic surfactant in the particles (a) is in this case necessarily greater than 20% by weight of the particles (a) and the particles (a) form thus necessarily discrete domains within the tablets. Moreover, the amount of zeolite in the particles (b) is of 4 to 20% by weight, corresponding to an amount calculated on an anhydrous basis of about 3.3 to 16.4%, which range largely overlaps with that of claim 1 of the main request of 5 to 60%.

3.3 It is thus the Board's finding that the table of page 6 enables the skilled person to the perform the invention of this document throughout the entire disclosed range of compositions and that therefore the range of tablets disclosed in the table of document (6) largely overlaps with that claimed in the patent in suit.

The subject-matter of claim 1 of the main request thus lacks novelty (see T 0691/97, points 1.1, 1.2 and 1.4 of the reasons for the decision, not published in the OJ EPO, and T 0026/85, OJ EPO 1990, 022, points 9 and 10 of the reasons).

The main request has thus to be dismissed.

4. *Novelty of the second to fifth, seventh and eighth auxiliary requests*

4.1 Claim 1 of the *second auxiliary* request differs from that of the main request insofar as component (a) is **a spray-dried or granulated detergent base powder** or is **an anionic detergent-active compound in liquid, waxy or paste form on a particulate carrier material**. However, the particles (a) of document (6) are prepared, according to the teaching of this document, by spray-drying or by granulation (see page 4, lines 47 to 49 and page 5, lines 4 and 5) or by absorbing the neutralized pasty anionic surfactant onto other carrier components (page 5, lines 13 to 21). Furthermore, since a detergent base powder is nothing else than a powder comprising a detergent surfactant active and possibly other material, as conceded by the Appellants during oral proceedings, this feature cannot distinguish further the claimed subject-matter from the disclosure of the table on page 6 of document (6).

Therefore, all the additional features of claim 1 of this request are disclosed in document (6) in relation to the particulate (a).

4.2 Claim 1 of the *third and fourth auxiliary* requests differ, respectively, from that of the main and second auxiliary requests insofar as the preamble of the claim specifies that **the anionic detergent active material and the detergency builder, respectively, are comprised in amounts of 4 to 30% and 5 to 80% by weight**.

The concentrations of anionic surfactants and detergency builders in the table of document (6) reported above are also within this range and therefore the above mentioned additional features cannot distinguish further the claimed subject-matter as also conceded by the Appellants during oral proceedings.

4.3 Claim 1 of the *fifth auxiliary* request differs from that of the fourth request insofar as component (a), when present as **a spray-dried or granulated detergent base powder, is contained in amounts of from 15 to 40 wt%**.

The claimed subject-matter is thus either identical or largely overlaps with that of the fourth auxiliary request.

4.4 Claim 1 of the **seventh and eighth auxiliary** requests further differ, respectively, from the fourth and fifth requests insofar as they additionally comprise the limitation that **the detergent tablet has a DFS of at least 5 kPa.**

Document (6) does not contain any generic teaching

about the DFS; however, it teaches that the detergent tablets should be prepared by pressing to a densifying ratio of 1:1.3 to 1:1.6 in order to provide **sufficient hardness** and suggests the use of pressures of 300 to 1000 Kg/cm^2 (page 5, lines 51 to 53), corresponding to about 30 to 100 MPa, i.e. compaction pressures similar to those used in the patent in suit and even higher than the preferred ones of the patent (see page 5, lines 54 to 56). Since the patent in suit does not require any specific features for the obtention of the required DFS apart from the composition of the particles and the indicated compaction pressures and document (6) discloses tablets, which have identical particles composition as put forward in points 4.2 and 4.3 above and are prepared by using similar or even higher pressures than the patent in suit, the tablets disclosed in the prior art document must necessarily have a DFS as claimed in the patent in suit of at least 5 kPa.

4.5 The Board finds therefore that claim 1 of all these auxiliary requests lack novelty for the same reasons as put forward above in points 3.3 and 4.1 to 4.4.

All the auxiliary requests must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Rauh P. Krasa