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D E C I S I O N
of 14 February 2002

Case Number: T 0073/98 - 3.3.6

Application Number: 94870189.1

Publication Number: 0677577

IPC: C11D 17/00

Language of the proceedings: EN

Title of invention:

Foamed cleaning compositions and method of treating textile fabrics

Applicant:

THE PROCTER & GAMBLE COMPANY

Opponent:

-

Headword:

Foamed cleaning composition/PROCTER

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

"Novelty (main request - yes, after amendment) - combination of product features not disclosed"

"Inventive step (main request - yes, after amendment - problem not addressed in the cited prior art documents)"

Decisions cited:

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Catchword:

-



Case Number: T 0073/98 - 3.3.6

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 14 February 2002

Appellant: THE PROCTER & GAMBLE COMPANY
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 27 August 1997
refusing European patent application
No. 94 870 189.1 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. Krasa
Members: G. N. C. Raths
C. Holtz

Summary of Facts and Submissions

- I. This appeal is from the decision of the Examining Division refusing European patent application No. 94 870 189.1 concerning foamed cleaning compositions and method of treating textile fabrics.

During the examination procedure, the following documents were cited

(1): US-A-4 242 377 and

(2): WO-A-9 402 109.

The Examining Division held the subject-matter of the then pending claims to be novel but not to involve an inventive step, in view of document

(3): EP-A-0 586 295

filed by a third party.

Document (3) disclosed a composition for cleaning textiles encompassing pre-spotting compositions.

- II. The appellant lodged an appeal against this decision. During oral proceedings before the Board, the appellant submitted a main request and an auxiliary request. Independent Claims 1 and 7 of the set of 13 claims according to the main request read as follows:

"1. A packaged, liquid, built, detergent composition for cleaning textiles and comprising anionic surfactant, nonionic surfactant, water, builder and optionally chelating agent, characterised in that the amount of anionic and nonionic surfactant is at least 18% by weight of the composition, the amount of

builder is 10 to 82% by weight of the composition, the amount of water is below 50% by weight of the composition, and the composition is packed in an aerosol container with a propellant gas for discharging the composition from the container as a foam.

7. A method of cleaning textiles comprising applying a foam composition over the whole surface of the textiles and subsequently rinsing the textiles, wherein the composition comprises anionic surfactant, nonionic surfactant, water, builder and optionally chelating agent, characterised in that the amount of anionic and nonionic surfactant is at least 18% by weight of the composition, the amount of builder is 10 to 82% by weight of the composition and the amount of water is below 50% by weight of the composition."

- III. During oral proceedings held on 14 February 2002 the appellant argued, inter alia, that pre-spotting compositions comprise in essence non-ionic surfactants but not a combination of anionic and nonionic surfactants.
- IV. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of either the main request, or the auxiliary request as submitted in the oral proceedings, and the amended description, also submitted in the oral proceedings.
- V. At the end of the oral proceedings the Chairman announced the decision of the Board.

Reasons for the Decision

1. *Articles 83 and 84 EPC*

The requirements of Articles 83 and 84 EPC were never disputed during the examination procedure and the Board is satisfied that these requirements are met.

2. *Article 123(2) EPC*

2.1 Claim 1

Claim 1 differs from Claim 1 as originally filed in

- that "A packaged, liquid, built, detergent" was added before "composition for cleaning textiles",
- that "and" was inserted between "textiles" and "comprising",
- that the passage "anionic surfactant, nonionic surfactant, water, builder and optionally chelating agent," was inserted between "comprising" and "characterised in that the",
- that the passage "amount of anionic and nonionic surfactant is" replaced the passage "composition comprises",
- that "composition" replaced "surfactant system"
- that the passage "the amount of builder is 10 to 82% by weight of the composition, the amount of water is below 50% by weight of the composition, and the composition is packed in an aerosol

container with a propellant gas for discharging the composition from the container as a foam." was added at the end of the claim.

The above mentioned passages find their support in the application as originally filed (page 9, lines 16 to 18; page 10, lines 16 to 18; page 16, line 23; page 11, lines 12 to 13; page 16, lines 23 to 25; page 13, lines 2 to 4; page 9, lines 21 and 23 to 26).

The Board is satisfied that these amendments do not contravene Article 123(2) EPC which was not an issue during the examination procedure.

2.2. Claim 7

Since Claim 7, directed to a method, comprises in essence the same amendments as Claim 1, the same reasoning as set out for Claim 1 applies mutatis mutandis to Claim 7.

Hence Claim 7 does not contravene Article 123(2) EPC.

3. Novelty

3.1 Claim 1

Claim 1 concerns a packaged, liquid, built, detergent composition for cleaning textiles and comprising, inter alia, at least 18% by weight of anionic and nonionic surfactant, 10 to 82% by weight of builder and water in an amount being below 50% by weight of the composition.

Document (1) disclosed a composition comprising up to 15 wt% of surface active agent, document (2) a self-foaming liquid cleansing composition, and document (3) a quick foaming pressurized composition comprising,

inter alia, 0.01 to 40% anionic, nonionic, cationic, zwitterionic or amphoteric surfactant, 0.01 to 30% active material, the water content comprising the balance of the composition.

The combination of the three features, namely surfactant, water and builder in the respective amounts as defined in Claim 1, in particular the combination of anionic and nonionic surfactants was not disclosed by any of documents (1), (2) and (3).

Therefore, the Board is satisfied that the subject-matter of Claim 1 was not anticipated by any of the cited documents. It follows that the subject-matter of Claim 1 and of the dependent Claims 2 to 6 complies with the requirements of Article 54(1) (2) EPC.

3.2 Claim 7

Claim 7 concerns a method of cleaning textiles comprising applying a foam composition over the whole surface of the textiles and subsequently rinsing the textiles, wherein the composition is defined as in Claim 1.

Hence, the same reasoning as set out for Claim 1 applies mutatis mutandis to Claim 7. The subject-matter of Claim 7 as well as the subject-matter of the dependent Claims 8 to 13 complies with the requirements of Article 54(1) (2) EPC.

4. *Inventive step*

4.1 The objective of the patent application in suit was to deliver high concentrations of detergent active material to all parts of textile fabric to be washed. A

number of methods to achieve this were already known and acknowledged as state of the art in the patent application in suit (page 2, lines 5 to 17).

4.2 In fabric washing methods utilizing foams, the latter were produced from aqueous solutions containing relatively low amounts of surfactants (page 2, lines 33 to 38). Foams were also used for fabric conditioning (page 2, lines 46 to 50, referring to document (1)). Finally, foams were applied to local regions of (stained) textile fabric in fabric pretreatment (page 2, lines 18 to 26, and document (3) page 4, line 53). None of these methods discloses foams to be delivered to and used for the efficient cleaning of fabrics (page 2, lines 53 to 54).

4.3 The technical problem addressed in the patent application in suit in respect to the above state of the art was to provide a foam easily dispersing over the whole surface of a textile fabric, thereby delivering a concentrated detergent material uniformly over and directly to the fabric surface (the paragraph bridging pages 2 and 3).

4.4 Since the examples 1 to 4 of the patent application in suit prove that this problem was credibly solved, the Board accepts the latter as underlying the invention disclosed in the application in suit.

4.5 The question remains whether or not the claimed solution to this technical problem involved an inventive step.

4.5.1 The problem as defined in the application in suit not being posed in the documents illustrating the above state of the art, the skilled person cannot find any hint in said documents how to solve the existing technical problem.

4.5.2 In view of the passing remark in document (3) relating to pre-spotting of textile fabrics (page 4, line 53), the Examining Division was of the opinion that the detergent compositions according to the application in suit not only comprised compositions suitable for being spread over the whole textile fabric, but also pre-spotting compositions; therefore it concluded that the compositions claimed in the patent application as filed were not inventive.

However, during oral proceedings the appellant explained that pre-spotting compositions contain only nonionic surfactants but not combinations of anionic and nonionic surfactants. In the absence of evidence to the contrary, the Board accepts this argument. It follows that the solution to the problem proposed by the applicant, namely the provision of a concentrated detergent foam was not obvious for the notional skilled person.

4.6 For these reasons, the Board decides that the subject-matter of Claim 1 meets the requirements of Articles 52 and 56 EPC. Dependent Claims 2 to 6 refer to specific embodiments thereof and derive their patentability from the subject-matter of Claim 1.

Claim 7 concerns a method of cleaning textiles by applying a detergent foam composition over the whole surface of the textiles and subsequently rinsing the textiles, the composition being the composition as defined in Claim 1. Thus Claim 7 and the dependent Claims 8 to 13 are based on the same inventive concept as Claim 1.

Therefore, the set of Claims 1 to 13 is allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent with Claims 1 to 13 of the main request and the amended description, both submitted in the oral proceedings on 14 February 2002.

The Registrar:

The Chairman:



G. Rauh



P. Krasa