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D E C I S I O N
of 8 June 2001

Case Number: T 0688/98 - 3.2.6

Application Number: 91311313.0

Publication Number: 0490577

IPC: D06F 39/02

Language of the proceedings: EN

Title of invention:
Dispensing device

Patentee:
Unilever Plc, et al

Opponent:
Henkel Kommanditgesellschaft auf Aktien

Headword:
-

Relevant legal provisions:
EPC Art. 83, 52(1), 54(1), 56

Keyword:
"Sufficiency of disclosure - yes"
"Novelty and inventive step - yes"

Decisions cited:
-

Catchword:
-



Case Number: T 0688/98 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 8 June 2001

Appellant: Henkel
(Opponent) Kommanditgesellschaft auf Aktien
TFP/Patentabteilung
D-40191 Düsseldorf (DE)

Respondent: Unilever Plc
(Proprietor of the patent) Unilever House
Blackfriars
London EC4 4BQ (GB)

Representative: Mole, Peter Geoffrey
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 5 May 1998
rejecting the opposition filed against European
patent No. 0 490 577 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. C. Kadner
M. B. Tardo-Dino

Summary of Facts and Submissions

I. European patent No. 0 490 577 was granted with the following independent claims 1 and 12:

"1. A device (1) for dispensing a detergent or other composition in a washing machine comprising a unitary hollow body (5) for containing the composition and having a permanently open filling and dispensing aperture (6), the hollow body (5) comprising a self-standing body wall (4), characterised in that the body wall (4) opposite the filling aperture (6) is provided with one or more unobstructed holes (8) having a size through which wash liquor can enter and leave the hollow body (5) whilst preventing the escape of the composition prior to the device (1) being contacted by the wash liquor.

12. A method of washing laundry in the drum of a washing machine in which a re-usable dispensing device (1) is filled with a detergent or other composition and placed in the drum together with the laundry, the device (1) comprising a unitary hollow body (5) having a self-standing body wall (4) and a permanently open filling and dispensing aperture (6), characterised in that the self-standing body wall (4) is provided with at least one unobstructed hole (8) opposite the filling aperture the size and shape of which prevents the escape of the composition prior to contact with the water, water entering the hollow body (5) therethrough to facilitate the dispensing of the composition."

II. The Opposition against this patent which was based on the grounds of Article 100(a) and b) EPC was rejected by the Opposition Division by decision announced on 27 March 1998 during oral proceedings and posted on 5 May 1998 which took into consideration the following prior art documents:

(D1) EP-A-0 343 070

(D2) EP-A-0 368 680

(D3) US-A-3 400 808

(D4) GB-A-683 515

(D5) EP-A-0 346 113

(D6) DE-C-870 985

(D7) EP-A-0 044 034

(D8) US-A-4 014 105

(D9) EP-A-0 327 716

(D10) JP-A-51-47412

(D11) FR-A-340 720

(D12) DE-C-170 720

(D13) DE-C-190 446

(D14) US-A-1 800 692

(D15) GB-A-975 007

- III. On 3 July 1998 the Appellant (Opponent) lodged an appeal against this decision and paid the appeal fee on the same date.

Together with the statement of grounds of appeal, filed on 3 September 1998, the following document was cited:

(D16) JP-U-39-27657

- IV. In a communication dated 27 October 2000 the Board of Appeal informed the parties that it did not see any reason to deviate from the conclusions arrived at in the decision under appeal as far as it was based on documents D1 to D15. With respect to the newly filed document it noted that discussion would be necessary as to whether a combination of D16 with D2 was obvious and whether the result of such a combination would lead a skilled person to the claimed subject-matter.

- V. Oral proceedings were held on 8 June 2001.

The Appellant relied essentially upon the following submissions:

In respect of the ground of Opposition relating to insufficient disclosure of the invention it was not clear how the size of the holes should be determined for satisfactory operation of the dispenser. Indeed, a skilled person knew that a liquid would not leak out of the holes even when a liquid detergent was used due to surface tension depending on the detergent's viscosity and the hole length and diameter, but in this case the holes were "obstructed" by the liquid whereas claim 1

required unobstructed holes. Therefore a skilled person was not able to carry out the teaching of the patent.

The claimed subject-matter was obvious to a skilled person in view of the teachings given in D2 in combination with the common knowledge in the art. The embodiment of Figures 1 and 2 of this prior art document comprised one filling and dispensing aperture 4 with a self-standing wall whereas the embodiment of Figures 3 and 4 included a plurality of additional smaller unobstructed holes 12, 13 surrounding the central opening 11. If such a device according to Figures 1 and 2 was used in a washing machine having a vertical axis of movement the skilled person would immediately recognise that the device would not begin to sink before it was at a tilt, and that the sinking and dispensing of detergent could be accelerated by providing small apertures opposite the filling aperture. In this respect the mention of a pumping action, when pumping the solvent of detergent out of the dispenser, would presume that the wash liquor must have poured into the device in the first place, and the description of that effect would thus suggest the provision of holes at the bottom of the devise.

The claimed subject matter was also not inventive with respect to the prior art device of D16. The floating ball disclosed in that document comprised a selfstanding hollow body surrounded by a sponge and a filling opening at its top. Opposite the filling aperture unobstructed holes were arranged. If the person skilled in the art abandoned the sponge it would immediately become clear that the holes should not have a large diameter (as indicated in the patent in suit when using a liquid detergent) in order to prevent the

detergent from leaking out. Thus this device would also lead to the device claimed.

The Appellant requested that the decision under appeal be set aside and that European patent No. 0 490 577 be revoked.

VI. The Respondent requested that the appeal be dismissed and that the patent be maintained as granted. Its submissions are summarised as follows:

With regard to the allegedly insufficient disclosure, a skilled person would easily by trial and error experiment be able to find suitable dimensions of the holes after having acknowledged the principle of the invention disclosed in the patent specification. Since claim 1 related to a device as such the obstruction of the holes by a liquid detergent did not play a role because this would be a process feature which was not claimed.

Considering the prior art discussed in the patent specification the objective of the device of claim 1 was not only to make it easily sinkable but additionally to dispense the detergent in due time without directly spreading it onto the laundry, and to work well in each kind of washing machine, be it with horizontal or vertical axis of the drum, simultaneously being easy to produce and to handle. The dispensing holes in a number of devices disclosed in the other prior art documents could not lead to the invention since the importance of dispensing the detergent at an early state of the washing process was not mentioned, and the advantages of the claimed device could not be achieved with any of them.

The Appellant had failed to show that the subject-matter of claim 1 and 12 lacked an inventive step, and therefore the appeal should be dismissed.

Reasons for the Decision

1. The appeal is admissible.

2. *Disclosure of the invention*
 - 2.1 Having regard to the fact that the usually applied solid compositions of detergent have a particle diameter range which is well known in the art, it is considered straight forward to determine the hole lengths and diameters which are suitable to prevent the detergent powder from escaping from the hollow body after filling with detergent and before it is placed into the washing machine. Contrary to detergent compositions with a solid state, the values of viscosity which are inherent in different liquid detergents are widely spread, depending on their contents and parts of solvent used in preparing them.

 - 2.2 However, as was acknowledged by the Opponent, the skilled person who is a technician working in the field of development of washing machines is aware of the fact that a liquid detergent would not leak out of the dispensing device if its viscosity is high enough in relation to the hole length and diameter because surface tension would prevent it from flowing out. Then nothing more than simple experiments with varying hole dimensions in combination with the liquid detergent which is applied in a particular case are necessary to

determine the suitable hole dimensions. Thus suitable hole dimensions can be defined without exceeding the common knowledge in the art.

From the above considerations the Board concludes that the invention is disclosed in a sufficient way as to be reproducible by a skilled person.

3. *Novelty*

Novelty was not contested by the Opponent. The Board also does not see a reason to put novelty in doubt since none of the cited documents disclosed at least the characterising features of claims 1 and 12 in that the body wall of the dispensing device is provided with one or more unobstructed holes (claim 1) or at least one unobstructed hole (claim 12) opposite the filling aperture.

4. *Inventive step*

4.1 The closest prior art is represented by D2 which discloses a device for dispensing a detergent in a washing machine comprising a unitary hollow body 1 for containing the composition and having a permanently open filling and dispensing aperture 4, the hollow body consisting of a self-standing body wall.

4.2 Starting from this device the objective of the claimed invention is the avoidance of the disadvantages of the prior art embodiments and the provision of a dispenser which is easy to produce and to handle, does not damage the laundry and dispenses all detergent in all types of washing machines readily. This problem is solved by the device of claim 1 and by the method of claim 12.

- 4.3 The Appellant is of the opinion that the subject-matter of claim 1 is obvious based on D2 in combination with the common knowledge in the art.

The dispenser according to Figures 3 and 4 of D2 is filled through the apertures 11, 12 and 13 (column 7, lines 23 to 26) which indicates that the holes 12 and 13 must have such a dimension that the powder detergent can easily pass through them. The Board does not see a logical link between the disclosure of the size of the holes and a desire to change the position of the holes. Even assuming that a skilled person would want to arrange these holes at another position of the floating ball - upside or downside from the equator - the size of the holes would not prevent the detergent from escaping when just filled. Since there is no mention of holding the detergent inside the device by means other than by its closed wall, this prior art device cannot suggest retaining it by unobstructed holes of such a dimension that the undissolved powder cannot pass through them.

- 4.4 The Appellant further doubts an inventive step with respect to the floating ball disclosed in D16.

The objective of this floating ball is mainly the replacement of a brush formerly put into the washing machine together with the laundry which involved the danger of damaging the laundry (page 1, last 9 lines). The avoidance of this disadvantage is achieved by a spherical plastic body provided with a number of holes and covered by a continuous foaming sponge which is intended to come into frictional contact with the laundry (page 2). In view of the effect realised by applying the sponge it is clear that the sponge

covering the ball is a main feature of this device and cannot be abandoned without deviating absolutely from the teaching of the disclosure of D2. Therefore the skilled person would not be led to abandon the sponge of this device, and the question whether the holes in the spherical plastic body are obstructed or not is irrelevant. In any case, the arrangement of D16 cannot lead to the subject-matter of claim 1 including the characterizing feature of unobstructed holes provided opposite the filling aperture.

4.5 The further prior art documents were no longer relied upon during the oral proceedings, and in agreement with the decision of the Opposition Division the Board concludes that they do not come closer to the claimed subject-matter than the documents discussed above. Consequently the subject-matter of claim 1 could not be arrived at without the involvement of an inventive step.

4.6 According to the method of claim 12 a dispensing device including the main features of claim 1 is used. Since the device of claim 1 is novel and inventive, novelty and inventive step of its application in a washing method is also concluded.

5. Summarising, the Board concludes that the patent complies with the requirements of the EPC and that it can be upheld unamended.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau