

LT 0038/02 - 020630010

DECISIONS OF THE BOARDS OF APPEAL

Decision of Technical Board of Appeal 3.3.2 dated 18 December 2001

T 9/00 - 3.3.2

(Translation)

Composition of the board:

Chairman: P. A. M. Lançon

Members: S. U. Hoffmann

U. Oswald

Patent proprietor/Respondent: Beiersdorf Aktiengesellschaft

Opponent/Appellant:

(1) Henkel Kommanditgesellschaft auf Aktien

(2) Cognis Deutschland GmbH

Headword: Opposition/HENKEL

Article: 99(1) and (4), 106(1), 107, 108, 111(1), 113(1) EPC

Rule: 55(1), 56(1) and (3), 64(b), 67, 68(1), 70(1) and (2) EPC

Keyword: "Entitlement to appeal, double filing of opposition by same person, transfer of opponent status"

Headnote:

A (legal) person who files two different notices of opposition to the same granted patent acquires party status as opponent only once, even if both notices comply with the requirements of Article 99(1) and Rule 55 EPC (see Reasons 2(c)(cc)).

If the later of these oppositions does not entail any change in the legal situation in the opposition proceedings compared to the earlier opposition, the later opposition is inadmissible for lack of a general legitimate interest.

A general legitimate interest cannot be inferred from the fact that the later opposition is assigned to a different part of a company to the earlier opposition and only that part of the company is being transferred to a third party.

If, as in the present case, the subject of an opposition is assigned to two different parts of the opponent's company, the status of opponent can pass to a third party only if both parts or the entire company are transferred to it.

Summary of facts and submissions

I. European patent No. 0 683 662 was granted in respect of Euro-PCT application No. 94 906 172.5, mention of the grant being published in European Patent Bulletin No. 98/25 on 17 June 1998.

II. On 22 January 1999, Henkel KGaA filed notice of opposition, signed by Dr Foitzik and Dr Glasl, to European patent No. 0 683 662 in its entirety (opposition 1) and issued a deposit account debit order for the opposition fee.

III. In a fax dated 10 March 1999, Société L'Oréal gave notice of opposition to the above patent (opposition 2).

IV. In a fax dated 16 March 1999, Stada Arzneimittel AG gave notice of opposition to the granted patent (opposition 3).

V. On 16 March 1999, Henkel KGaA filed a further (faxed) letter, this time signed by Dr Maurer and Dr Fabry, giving notice of opposition to European patent No. 0 683 662 and requesting that the patent be revoked in full (opposition 4). No reference was made to the earlier notice of opposition dated 22 January 1999 (opposition 1). A deposit account debit order was issued for the opposition fee.

VI. The grounds given in both Henkel KGaA's notices of opposition were the patented invention's lack of novelty and lack of inventive step; but the two notices differed in wording and in substance and cited different prior art.

VII. On 18 March 1999, the formalities officer dealing with the case rang Henkel KGaA to draw its attention to the existence of two notices of opposition.

VIII. In a fax dated 18 March 1999 Henkel KGaA explained that the double filing had been a mistake, but the oppositions were on behalf of two different divisions of Henkel KGaA with different market interests, the first for the cosmetics division, the second for the chemistry division. As it intended to spin off its chemistry division and run it as an independent company, it had an interest in maintaining both oppositions.

It therefore requested that the later of the oppositions be transferred to Henkel Corp., USA, and auxiliarily that the two oppositions be allowed to stand in parallel, so that when the relevant division was transferred the second opposition could be transferred as well.

IX. On 18 May 1999, in a letter signed by the opposition division's formalities officer, Henkel KGaA was informed that one person could be party to the same opposition proceedings only once, and party status could only be transferred together with that part of an opponent's assets or enterprise to which the opposition related.

On 18 May 1999, this letter was copied to the patent proprietor together with Henkel KGaA's notice of opposition of 16 March 1999 (opposition 4).

X. On page 17 of the opposition file, after the transaction mentioned in point IX, there is a stamped but unsigned copy, dated 10 September 1999, of a decision on the inadmissibility of the opponent's opposition, with a handwritten note on the form identifying it as "Henkel KG (16/3/99)".

The computer printout indicates that this communication was addressed to Henkel KGaA, and it includes the printed names of the opposition division members who drew it up. The signatures of these members do not appear either on the computer printout or on a separate signature sheet. In the communication the preprinted words "Anlagen: Entscheidungsgründe" [Enclosed: Grounds for the decision] are followed by the handwritten note "siehe Mitteilung vom 18/5/99" [see communication of 18 May 1999].

Copies of the above communication of 10 September 1999 were sent to Henkel KGaA and to the patent proprietor.

XI. In a letter dated 15 October 1999 and received on 20 October 1999, Cognis Deutschland GmbH through its professional representative Dr Fabry lodged an appeal (2) contesting the opposition division's decision on the inadmissibility of the

opposition and issued a deposit account debit order for the appeal fee, the withdrawal being made by the EPO on 20 October 1999.

XII. In its notice of appeal, Cognis Deutschland GmbH referred to a joint request dated 13 August 1999 filed with the EPO by Henkel KGaA, seeking transfer of opponent status for a large number of cases to Cognis Deutschland GmbH. The case at issue here is No. 33 in the annexed list of the cases in question. The basis for this request was that Henkel KGaA had, with effect from 1 August 1999, transferred all the technologies and property rights of its chemical products division to the sole ownership of Cognis Deutschland GmbH. The asset transfer agreement between Henkel KGaA and Cognis Deutschland GmbH of 26 July 1999 was submitted as evidence. Article 13 of this agreement makes it subject to the suspensive condition that Cognis Deutschland GmbH must undertake to increase the share capital by EUR 9 974 400.

In the proceedings concerning transfer of the oppositions, Cognis Deutschland GmbH with a letter of 25 August 1999 submitted an extract from the Commercial Register as evidence that Cognis Deutschland GmbH had been registered as the company name on 21 May 1999 and that the decision to increase the share capital by EUR 9 974 400 had been registered on 6 August 1999.

XIII. In the grounds for its appeal, Cognis Deutschland GmbH stated that Henkel KGaA had validly filed two oppositions (21 November 1998 and 16 March 1999) and paid two opposition fees. Henkel KGaA had asked for the opposition relating to its chemistry division to be transferred to Cognis Deutschland GmbH before the opposition division handed down its decision. According to the Enlarged Board of Appeal's decision in G 4/88, an opposition could be transferred to the

universal successor in title because an opposition constituted an inseparable part of a company's assets.

XIV. In a letter dated 29 October 1999, received on 4 November 1999, Dr Fabry filed an appeal on behalf of both Henkel KGaA (appellant 1) and Cognis Deutschland GmbH (appellant 2), named himself joint representative of both appellants, substantiated the two appeals in expressly the same terms and with regard to the appeal fee referred to the existing debit order of Cognis Deutschland GmbH. The statement of grounds has essentially the same content as the text of Cognis GmbH's statement of grounds of 20 October 1999. In addition it argues that filing the appeal again on behalf of both Cognis Deutschland and Henkel KGaA was necessary because no decision had yet been taken on the request to transfer Henkel KGaA's opposition of 16 March 1999 to Cognis.

XV. The appeal notices of 20 October 1999 and 29 October 1999 were communicated to the patent proprietor and to opponents 2 and 3.

XVI. In a letter from the EPO's DG 2 of 11 April 2000, the patent proprietor and opponents 1 to 4 were informed that, pursuant to the request of 13/25 August 1999, the record of the name and address of the opponent Henkel KGaA had been amended to Cognis Deutschland GmbH with effect from 27 August 1999.

XVII. In preparation for a decision, the board of appeal on 6 September 2001 notified the existing parties of the state of the proceedings, the facts of the case according to the files, and the essential legal issues that needed to be settled. The board also indicated that Henkel KGaA as appellant 1, Cognis Deutschland GmbH as appellant 2 and the patent proprietor were parties to the appeal proceedings, whereas opponents 2 and 3 were being notified for information purposes only.

XVIII. In a letter dated 22 October 2001, Henkel KGaA through its professional representatives Dr Foitzik and Dr Augustin-Castro stated that the general authorisation formerly accorded to Dr Fabry had been revoked with respect to the European Patent Office by letter of 4 August 1999, and he would not be empowered to act as an unauthorised representative. The transfer of opponent status from Henkel KGaA to Cognis Deutschland GmbH had been contractually agreed, for both internal and external purposes, only for the opposition filed with the letter of 16 March 1999.

XIX. The notice of appeal of 29 October 1999 signed by Dr Fabry submitted the following identically worded requests for both appellants:

1. The contested decision should be set aside.
2. The opposition of 16 March 1999 should be transferred from Henkel KGaA to Cognis Deutschland GmbH.
3. The appeal fee should be refunded.

The letter of 22 October 2001 signed by Dr Foitzik and Dr Augustin-Castro submitted the following requests for appellant 1:

1. The Office should rule that Henkel KGaA is and continues to be opponent 1 and party to the proceedings on the basis of the opposition filed with the letter of 22 January 1999.
2. The Office should rule that the documents cited in Henkel KGaA's notice of opposition of 16 March 1999 are to be considered part of the proceedings.

The respondent (patent proprietor) did not submit any requests.

Reasons for the decision

1. Admissibility of the appeals

(a) Decision impugned by the appeal

Under Article 106(1) EPC, appeals may be filed against decisions of the Receiving Section, examining divisions, opposition divisions and the Legal Division. In the present case appellants 1 and 2 impugn the opposition division's decision to reject opposition 4 of Henkel KGaA as inadmissible.

The facts of the case as summarised above show that the files do not include any original document bearing signatures of the persons charged with taking the decision. However, doubt over whether any such decision was taken and therefore actually exists does not rule out an appeal under Article 106 EPC. On the basis of the copy they received of the decision which arguably does not exist, the appellants have a legitimate interest in having an objective decision taken in the appeal proceedings as to whether or not the copy they received is based on an actual opposition division decision. Sending the appellants a copy of a decision gave that decision an appearance of legality which the appellants are entitled to have dispelled. The issue of whether the decision was taken by the competent department must be examined in the context of the appeal's merits (see below) and has no impact on its admissibility.

(b) Scope of the appeal proceedings

Appeal proceedings are entirely separate from proceedings at first instance. Their primary function is to review and if necessary amend or cancel the first-instance decision (Rule 64(b) in conjunction with Article 111(1) EPC). The impugned decision rejected Henkel KGaA's notice of opposition of 16 March 1999 (opposition 4) as inadmissible under Rule 56(1) EPC. It was taken in ex parte proceedings without the involvement of the other opponents or the patent proprietor because the wording of Rule 56(3) EPC does not provide for involvement of the patent proprietor until after the decision on admissibility has been taken. In the present case the appeal proceedings will consider the admissibility of Henkel KGaA's notice of opposition of 16 March 1999 (opposition 4), because proceedings at first instance were also restricted to that issue. They will not decide which facts, and in particular which documents, underlie opposition 1.

(c) Parties to the appeal proceedings

(aa) The board here has to examine whether one joint appeal or two separate appeals have been filed for appellants 1 and 2.

This is in doubt because after Cognis Deutschland GmbH had given notice of appeal on 20 October 1999, a second notice of appeal dated 29 October 1999 was filed on behalf of both Cognis Deutschland GmbH and Henkel KGaA. In the notice of 29 October 1999 the appellants do not use the term "joint appeal", but they jointly file identical requests, they cite identical grounds, and for both appeals they refer to the appeal fee paid on 20 October 1999 by means of a debit order from Cognis Deutschland GmbH. The reason given for this approach was uncertainty whether the transfer request filed on 13 August 1999 by Henkel KGaA on behalf of Cognis Deutschland GmbH in relation to this case among others would be granted by the EPO's Transcription Service retroactively from the time of its filing. The competent

DG 2 formalities officer in fact implemented the requested transfer for the patent application at issue on 11 April 2000, with an order to backdate it to 27 August 1999. Hence until the time limit for filing the appeal had elapsed, it was uncertain whether Henkel KGaA or Cognis Deutschland GmbH would be formally entitled to appeal.

This situation and the fact that reference was made on behalf of both companies to the appeal fee paid by Cognis Deutschland GmbH do not however justify treating the notice of appeal of 29 October 1999 as a joint appeal. This interpretation is contradicted not only by the clear wording of the notice, according to which the appeal is filed for the first time on behalf of Henkel KGaA and repeated in respect of Cognis Deutschland GmbH, but also by the interests they are each said to have in the proceedings. A joint appeal by Henkel KGaA and Cognis Deutschland GmbH could not constitute a formal entitlement to appeal within the meaning of Article 107 EPC, because the two companies can never have been party to the proceedings jointly, but only consecutively, and only either Henkel KGaA or Cognis Deutschland GmbH can have been directly adversely affected by the impugned decision. Thus the notice of appeal of 29 October 1999 comprises two appeals, one by Henkel KGaA and one by Cognis Deutschland GmbH, which in legal terms must be separately treated and examined as such for admissibility and validity.

(bb) Furthermore, the board has formally made the patent proprietor a party to the appeal proceedings, even though the proprietor was not involved in the proceedings until the decision was taken by the department of first instance. The proprietor's current involvement is essential with a view to the right to be heard (Article 113(1) EPC), as a decision by the board that the opposition of 16 March 1999 is admissible would be to the proprietor's disadvantage, and for the sake of uniformity the decision must be taken vis-à-vis the proprietor as well.

(d) Validity of the appeals

(aa) Appeal 2 filed on 20 October 1999 on behalf of Cognis Deutschland is deemed to have been filed in accordance with Article 108 EPC because a deposit account debit order for the appeal fee was issued together with the notice of appeal. The fact that the appeal was filed again with the notice of 29 October 1999 does not invalidate the above-mentioned legal effects.

(bb) Appeal 1 entered on 29 October 1999 on behalf of Henkel KGaA is deemed not to have been filed in accordance with Article 108, second sentence, EPC because no appeal fee was paid for it, the notice merely referring to the debit order of 20 October 1999 issued for the appeal of Cognis Deutschland GmbH. This original payment order, which made Cognis Deutschland GmbH's appeal immediately effective, cannot subsequently be reassigned to Henkel KGaA, because the appeal fee had already been used for Cognis Deutschland GmbH with effect from 20 October 1999. The board therefore finds that appeal 1 entered by Henkel KGaA is deemed not to have been filed.

There is consequently no need to examine whether Dr Fabry was entitled to file the notice of appeal of 29 October 1999 in the name of Henkel KGaA as well in pursuit of the rights arising from the opposition of 16 March 1999.

(e) Admissibility of appeal 2

(aa) Time limit, form and content

Cognis Deutschland GmbH's appeal complies with Article 108 and Rule 64 EPC in terms of time limit, form and content. As Cognis Deutschland GmbH gave sufficient

grounds for its appeal in the notices of 20 and 29 October 1999, the time limit for filing the statement of the grounds of appeal was also met.

(bb) Formal entitlement to appeal

Cognis Deutschland GmbH was not, as prescribed by Article 107, first sentence, EPC, a party to the ex parte proceedings which resulted in the impugned decision, although a transfer request in its name had been filed before the decision was taken.

The board has to use its own discretion in examining appellant 2's formal party status. It is not bound by DG 2's agreement to the transfer request, as it alone can decide who are the parties to appeal proceedings.

In the board's view, however, appellant 2 must not suffer any prejudice from the fact that the transfer request, which was already pending, was not ruled on in the impugned decision, but only subsequently with retroactive effect from the time of its filing. The board therefore affirms appellant 2's formal entitlement to appeal.

(cc) Substantive entitlement to appeal

The impugned decision differs in substance from the filed request, so the opponent is adversely affected substantively in accordance with Article 107, first sentence, EPC.

(f) Summing up, the board finds that appeal 2 is admissible, whereas appeal 1 is deemed not to have been filed.

2. *Merits of appeal 2*

(a) Competent department under Rule 56(1) EPC

A decision of the EPO is valid only if it has been taken by a department which is competent under the EPC or its Implementing Regulations, in the form appropriate to that decision.

The impugned decision concerns the admissibility of Henkel KGaA's opposition of 16 March 1999 (opposition 4). Under Section II, point 6, of the Notice of the Vice-President of Directorate-General 2 of the EPO dated 28 April 1999 (OJ EPO 1999, 504), responsibility for decisions in *ex parte* proceedings on the inadmissibility of an opposition (except in the cases provided for in Rule 55(c) EPC) was entrusted to the formalities officer. This however did not affect the competence of the opposition division to take decisions itself (see point III of the Notice).

The printed text of the copy of the decision which is in the file gives the names of the chairman and two examiners of the opposition division. The file does not include a decision in writing complying with Rules 68(1), second sentence, and 70(1) EPC, furnished with the signatures of those named, which means that any such decision, if indeed it was taken, is formally invalid and must be set aside.

For the same reasons, the decision likewise cannot be reinterpreted as a decision of the formalities officer who made the printout of the "copy", as his signature is not present either. The formalities officer's signature cannot be replaced by the seal on the copy on file in accordance with Rule 70(2), second sentence, EPC, as the decision was not produced automatically by a computer. Under Rule 70(2) EPC, the formalities officer responsible for issuing the decision must be mentioned by name on

the communication unless the decision is produced automatically by a computer. These requirements are not met by the copy of the "decision" on file.

The decision of 10 September 1999 is therefore invalid on account of the above formal deficiencies alone and must be set aside.

The decision must be set aside even if the formalities officer wrongly assumed that the opposition division had taken a decision and the copies he sent were based on a decision that was never taken and therefore did not exist. For reasons of legal certainty the judgment setting aside the decision must include a ruling that the decision does not actually exist.

(b) The board's competence to take the decision

In the light of the particular circumstances of the case, the board exercised its discretion under Article 111(1), second sentence, EPC and did not remit the case to the department of first instance, despite the identified procedural irregularity, but undertook further substantive review itself. Substantively, the sole subject of the appeal is the admissibility of opposition 4. A decision on this can be taken without any further discussion of the facts or any taking of evidence, so for reasons of procedural economy the board can take the decision itself forthwith.

(c) Admissibility of opposition 4

(aa) An opposition must be admissible in order for the opposition division to be able to take a decision on its merits.

An isolated check on the opposition of 16 March 1999 shows that it would meet all the admissibility criteria of Article 99 and Rule 55 EPC.

Hence the only possible grounds for reservations about the opposition's admissibility are that Henkel KGaA had filed opposition 1 earlier and that the lack of legitimate interest may be an obstacle to repeated filing of an opposition.

No one is entitled to have an administrative authority or a court take a second substantive decision on a case which has already been settled (*ne bis in idem*). If an earlier request is admissible and can be used as the basis for a substantive decision, later requests for the same ruling are inadmissible for lack of legitimate interest. The requirement for a legitimate interest as a general admissibility criterion is equivalent to the *res judicata* effect of a decision. Once an initial request has been decided upon substantively at final instance, this decision becomes *res judicata* between the parties to the proceedings and likewise makes any new request concerning the same subject inadmissible.

However, the objection that a procedural act is inadmissible for lack of legitimate interest cannot be raised if the provisions of the EPC expressly rule out this objection (see point 2(c)(bb) below), or if the earlier procedural act does not pre-empt a further legal effect for the second act (see point 2(c)(cc) below), or if the principles of the right of opposition as developed by case law justify making an exception (see point 2(c)(dd) below).

(bb) The wording of Article 99(1), first sentence, EPC, whereby any person may give notice of opposition to a granted European patent, does not make the admissibility of an opposition conditional on legitimate interest, but neither does it indicate whether or not repeated, legally independent opposition by the same person is permissible.

According to Article 99(4) EPC, in addition to the patent proprietor, all opponents are parties to the opposition proceedings. The grouping of multiple oppositions in joint proceedings likewise does not offer any definite conclusion as to whether the same person can be party to the proceedings as opponent more than once.

Thus no general requirement for legitimate interest in order for repeated filing of opposition to be admissible can be inferred from the wording of the EPC's provisions.

(cc) Exceptionally, a general legitimate interest justifying the admissibility of opposition 4 could be held to exist if Henkel KGaA's filing of opposition 1 had not given it a party status which enabled it to request a substantive decision. If the admissibility of a procedural act is in doubt, it may indeed be appropriate to repeat it. Party status may then be acquired either through the original procedural act or through the repeat, without party status being duplicated thereby. The second procedural act will only be required if the first is inadmissible.

The board has therefore additionally examined whether opposition 1 of Henkel KGaA is admissible and confirmed that it is because it meets the requirements of Article 99(1) and Rule 55 EPC. Both opposition 1 and opposition 4 cite lack of novelty and lack of inventive step as their grounds for opposition and therefore have the same legal framework.

Hence opposition 4 could not confer upon opponent Henkel KGaA any other party status than it had already acquired through opposition 1. Thus there was no legitimate interest in the pursuit of opposition 4 on grounds of formal uncertainty over the formal validity of opposition 1, and in that light the admissibility of opposition 4 must be denied.

(dd) Decision G 4/88 (*loc. cit.*) ruled that an opposition constituted an inseparable part of the assets of a business and could be transferred together with the part of the company to which the subject-matter of the opposition related.

From this ruling the appellant concludes that repeated filing of opposition by the same person is possible if each opposition can be assigned to a separate part of the opponent's business, and that this "right of opposition" can then be separately transferred together with the associated part of the company to the owner of the new company.

However, recognition of a multiple, individually transferable right of opposition for an individual (legal) person runs counter to the principles of case law on the nature of opposition proceedings.

The Enlarged Board of Appeal in its decision of 31 March 1993 (G 9/91, OJ EPO 1993, 408) held that opposition proceedings under the EPC were in principle to be considered as contentious proceedings between parties. The parties are therefore always involved in proceedings as complete legal entities, not as representatives of just one part of their business, regardless of the subject of litigation. Likewise, the legal effect of a board of appeal decision operates between the parties, not between parts of their business.

Decision G 4/88 (*loc. cit.*) does not establish the transferability of any person's right under Article 99(1) EPC to give notice of opposition, which would make no sense not least because that right is open to everyone by virtue of that very provision. The filing of an opposition as a procedural act must be distinguished from the procedural outcome at which it aims, ie the status of party to the opposition proceedings. Thus it is inaccurate to refer to the transferability of the "right of opposition", as what is meant

is not any person's right to give notice of opposition, but the transferability of the party status acquired by that act.

G 4/88 makes it clear that the right open to any person to give notice of opposition gives rise to a subjective right, consisting of a bundle of procedural rights, only through actual institution of the proceedings (Reasons, 2). Thus in keeping with this decision all that is transferable is party status as opponent, not a right "to file opposition in the interests of part of a company (as a legal person)".

Hence, according to the cited decision too, party status conferring entitlement to a substantive decision may be acquired only once. Once this status, granting the cited bundle of procedural rights, has been acquired through an admissible request, subsequent requests to have this party status granted again are inadmissible for lack of legitimate interest, as the desired legal status as opponent has already been granted.

What might undermine this conclusion is the finding in G 4/88 that an opposition constitutes part of a company's assets. That makes it unclear which of the two appellants in the present case is entitled to conduct the opposition proceedings after the transfer of Henkel KGaA's chemistry division to Cognis Deutschland GmbH, as the proceedings are supposed to have been instituted in the interests both of the chemistry division and of the cosmetics division which stayed with Henkel KGaA, and the subject-matter of the patent can be assigned to either division.

An opposition's assignment to a specific area of economic activity may be influenced by subjective decisions, and in specific circumstances this may make the legal situation difficult to assess.

Had appellant 1 (Henkel KGaA) from the outset co-ordinated the interests of its cosmetics and chemistry divisions, there would also only have been one opposition, and it would still be uncertain who was authorised to conduct the opposition proceedings after transfer of the chemistry division. Even in this case appellant 2's opinion would mean a possible duplication of party status.

Such opposition proceedings can only be assigned to the company as a whole and consequently can only be transferred with it as a whole or with all the parts of the company which are assigned to the opposition.

This also applies to the present case, where the opposition proceedings were meant to be conducted in the interests of two different divisions at once, but the opposition was filed twice (by mistake). There are no legal grounds for treating the two instances differently.

As the two divisions to which the subject-matter of the opposition proceedings was assigned were not both transferred to appellant 2 (Cognis Deutschland GmbH), appellant 1 (Henkel KGaA) remained the sole party to the opposition proceedings by virtue of its filing of opposition 1.

The assignment of one or more oppositions to different areas of business of a (legal) person thus does not give rise to any uncertainty over party status in opposition proceedings which might justify a general legitimate interest for the admissibility of opposition 4.

Hence opposition 4 is inadmissible for lack of legitimate interest.

(d) Transfer of opposition 4 to appellant 2

Appellant 2 further requested to have the opposition of 16 March 1999 transferred to Cognis Deutschland GmbH. The ruling on the inadmissibility of opposition 4 in 2(c) above also implies that this procedural act does not confer any entitlement to party status in subsequent opposition proceedings at first instance. Appellant 2 cannot have acquired more rights through the requested transfer of opposition 4 than the successor in title itself possessed in respect of opposition 4. Hence the request to transfer the opposition of 16 March 1999 (opposition 4) from Henkel KGaA to Cognis Deutschland is unfounded and must be rejected.

(e) To sum up, the conclusion to be drawn from the above legal considerations on the merits of appeal 2 is as follows:

The opposition division's decision of 10 September 1999 is invalid because it is unsigned. Rather than remitting the case, the board has exercised its right under Article 111(1) EPC to decide on the admissibility of opposition 4 itself.

Henkel KGaA through the double filing of oppositions 1 and 4 on 22 January 1999 and 16 March 1999 respectively did not acquire a double "right of opposition", but only party status as an opponent on the basis of opposition 1, which was filed first. Opposition 4 filed on 16 March 1999 was inadmissible for lack of general legitimate interest and did not justify any further party status for Henkel KGaA.

According to decision G 4/88, what is transferable is not a "right of opposition", but the party status acquired by the filing of an opposition. Henkel KGaA's assignment of the opposition proceedings to its cosmetics and chemistry divisions could only have conferred opponent status if the two divisions had been transferred at the same time. Transferring only the chemistry division to appellant 2 did not also transfer opponent status to it.

(f) As appeal 2 does not succeed, the conditions for reimbursement of the appeal fee as set out in Rule 67 EPC are not met.

Order

For these reasons it is decided that:

1. The impugned decision is set aside.
2. The appeal of appellant 1 is deemed not to have been filed.
3. Opposition 4 filed by appellant 2 is rejected as inadmissible.
4. The request to transfer Henkel KGaA's opposition of 16 March 1999 to Cognis Deutschland GmbH is rejected.