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**D E C I S I O N**  
**of 11 November 2005**

**Case Number:** T 0655/01 - 3.3.02

**Application Number:** 95904305.0

**Publication Number:** 0735858

**IPC:** A61K 7/50

**Language of the proceedings:** EN

**Title of invention:**  
Skin cleaning composition

**Patentee:**  
Colgate-Palmolive Co.

**Opponent:**  
Unilever PLC

**Headword:**  
Skin cleaning composition/COLGATE-PALMOLIVE

**Relevant legal provisions:**  
EPC Art. 100, 102, 106, 107, 108, 113(2)  
EPC R. 64, 71(1)

**Keyword:**  
"Revocation at the instigation of the patent proprietor -  
withdrawal of the approval to the text of the patent as  
granted; decision T 0073/84 followed"

**Decisions cited:**  
T 0073/84, T 0186/84, T 0237/86, T 0459/88

**Catchword:**

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Case Number: T 0655/01 - 3.3.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.02  
of 11 November 2005

**Appellant:**  
(Opponent)

Unilever PLC  
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**Representative:**

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**Respondent:**

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**Representative:**

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**Decision under appeal:**

Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
4 April 2001 concerning maintenance of European  
patent No. 0735858 in amended form.

**Composition of the Board:**

**Chairman:** U. Oswald  
**Members:** G. Rampold  
J. Willems

## Summary of Facts and Submissions

- I. The respondent is proprietor of European patent No. 0 735 858 ("the Patent") which was granted with effect from 27 January 1999 on the basis of European patent application No. 95 904 305.0 filed on 16 December 1994.
- II. The appellant filed notice of opposition on 26 October 1999 requesting revocation in full of the Patent on the grounds of lack of novelty and inventive step (Article 100(a) EPC), and insufficiency of disclosure (Article 100(b) EPC) and also added subject-matter (Article 100(c) EPC).
- III. By an interlocutory decision pronounced at the close of oral proceedings dated 14 March 2001, with the written reasons posted on 4 April 2001, the opposition division maintained the Patent in amended form.
- IV. An appeal against this decision was filed on 11 June 2001, with the appeal fee being paid at the same time. The statement of grounds of appeal was filed on 3 August 2001.
- V. In a communication dated 14 July 2005 both parties were duly summoned to oral proceedings before the board pursuant to Rule 71(1) EPC.
- VI. By facsimile dated 27 October 2005 the respondent (patent proprietor) informed the European Patent Office that it no longer approved the text of the Patent as granted and that it considered the opposition proceedings as terminated.

## Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
  
2. The board cannot decide whether the appeal is wholly or partially justified. The patent proprietor withdrew its approval of the text of the Patent as granted during the appeal proceedings and at the same time stated that it considered the opposition proceedings as terminated.

There is therefore no text of the Patent on the basis of which the board can consider the appeal. Under Article 113(2) EPC the European Patent Office must consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent (requirement of approval). This principle has to be strictly observed also in opposition and opposition appeal proceedings as well.

3. Since the text of the Patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will. If - as in the present instance - the patent proprietor explicitly withdraws during appeal proceedings its approval, expressed before the first instance, of the text of the Patent as granted and declares that it considers the opposition proceedings as terminated, which means that it will not be submitting an amended text, it may be inferred that the patent proprietor wishes to prevent any text whatever of the Patent from being maintained.

4. However, the patent proprietor cannot terminate the proceedings by informing the EPO that it is surrendering the European Patent, since this is not provided for in the Convention. Thus it would only be able, as far as national law permitted, to surrender the patent vis-à-vis the national patent offices of the designated Contracting States under the relevant national law (see eg Legal Advice No. 11/82 of the European Patent Office, OJ EPO 1982, 57).
  
5. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty, which calls for a clarification of the industrial rights situation. The only possibility in such a case is to revoke the Patent, as envisaged for other reasons in Article 102 EPC.

In the case of T 73/84 (OJ EPO 1985, 241. see especially Headnote and Reasons), board of appeal 3.2.1 has already decided that, if the proprietor of a European patent states in opposition or appeal proceedings that he no longer approves the text in which the patent was granted and will not be submitting an amended text, the patent is to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 237/86 (OJ EPO 1988, 261, T 459/88 (OJ EPO, 1990, 425).

6. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out in the above-mentioned decisions. The Patent must therefore be revoked.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The Patent is revoked.

The Registrar:

The Chairman:

A. Townend

U. Oswald