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D E C I S I O N
of 23 September 2002

Case Number: T 0163/02 - 3.3.6

Application Number: 91903488.4

Publication Number: 0515435

IPC: C11D 17/00

Language of the proceedings: EN

Title of invention:
Liquid Cleaning Products

Patentee:
UNILEVER PLC, et al

Opponent:
Henkel Kommanditgesellschaft auf Aktien
The Procter & Gamble Company

Headword:
-

Relevant legal provisions:
EPC Art. 108
EPC R. 65(1)

Keyword:
"Missing Statement of Grounds"
"Request for reimbursement of appeal fee (no)"

Decisions cited:
T 0013/82, T 0372/99

Catchword:
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Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0163/02 - 3.3.6

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 23 September 2002

Appellant: (Proprietor of the patent)
UNILEVER PLC
Unilever House
Blackfriars
London EC4P 4BQ (GB)

UNILEVER N.V.
P.O. Box 137
DK-3000 DK Rotterdam (NL)

Representative:
Waldren, Robin Michael
Lloyd Wise, Treager & Co.
Commonwealth House
1-19 New Oxford Street
London WC1A 1LW (GB)

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

Representative:
-

(Opponent)
The Procter & Gamble Company
One Procter & Gamble Plaza
Cincinnati
Ohio 45202 (US)

Representative:
Lawrence, Peter Robin Broughton
GILL JENNINGS & EVERY
Boardgate House
7 Eldon Street
London EC2M 7LH (GB)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 10 December 2001 revoking European patent No. 0 515 435 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: P. Krasa

Members: G. N. C. Raths
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. The appeal contests the decision of the Opposition Division of the European Patent Office dated 10 December 2001, to revoke the European patent No. 515 435 pursuant to Articles 102(2),(3) EPC.

II. The Appellant (Patentee) filed a notice of appeal on 11 February 2002 and paid the appeal fee on the same day.

III. By letter dated 17 April 2002 the appellant indicated that it did not intend to pursue the appeal and that no grounds of appeal would be submitted. He also requested the appeal fee be refunded.

IV. Nevertheless, the Registry of the Board issued a communication dated 10 May 2002 sent by registered letter with advice of delivery, to inform the Appellant that as no statement of grounds had been filed, the appeal could be expected to be rejected as inadmissible. The Appellant was invited to file its observations within two months and its attention was drawn to the possibility for re-establishment of rights of Article 122 EPC.

V. No answer was given within the time limit indicated in the Registry's communication.

Reasons for the Decision

1. As no written statement setting out the grounds of appeal has been filed and as the Appellant does not intend to pursue its appeal as put down in its letter

dated 10 May 2002, without expressly withdrawing its appeal, the appeal has to be rejected as inadmissible according to Article 108 EPC last sentence in conjunction with Rule 65(1) EPC.

2. The reimbursement of the appeal fee is only allowable:

- pursuant to the Rule 67 EPC in the event of a substantial procedural violation when the appeal is allowable

- when the notice of appeal is not deemed to have been filed because of a failure to pay the appeal fee within the time limit under Article 108 EPC second sentence (see T 13/82, OJ EPO 83, 411 and T 372/99).

  But the EPC provides no reimbursement of appeal fee if the appeal is inadmissible.

3. In the present case the appeal is deemed to have been filed since the notice of appeal was filed, and the appeal fee was paid, both within the time limit according to Article 108 EPC first sentence. But, as already set out, it is inadmissible under Article 108 EPC last sentence in conjunction with Rule 65(1) EPC.

Consequently, neither of the two possibilities for reimbursement above mentioned in point (2) above is available to the appellant and its request has no legal basis.

Order

For these reasons it is decided that:

1. The appeal is rejected as inadmissible.

2. The request to refund the appeal fee is refused.

The Registrar: The Chairman:

G. Rauh P. Krasa