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**Datasheet for the decision
of 4 September 2006**

Case Number: T 0311/05 - 3.3.06

Application Number: 97926002.3

Publication Number: 0907706

IPC: C11D 9/36

Language of the proceedings: EN

Title of invention:
Soap bar composition

Patentee:
UNILEVER PLC, et al

Opponent:
Colgate-Palmolive

Headword:
Soap bar/UNILEVER

Relevant legal provisions:
EPC Art. 111(1), 113(2)

Keyword:
"Withdrawal of the agreement to the text of the patent -
revocation of the patent"

Decisions cited:
T 0073/84, T 0157/85

Catchword:
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Case Number: T 0311/05 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 4 September 2006

Appellant: Colgate-Palmolive Company
(Opponent) 909 River Road
Piscataway, NJ 08854-5596 (US)

Representative: Prins, Adrianus Willem
Vereenigde
P.O. Box 87930
NL-2508 DH Den Haag (NL)

Appellants: UNILEVER PLC
(Patent Proprietors) Unilever House
Blackfriars
London EC4P 4BQ (GB)

UNILEVER N.V.
Weena 455
NL-3013 AL Rotterdam (NL)

Representative: Elliott, Peter William
Unilever Patent Group
Colworth House
Sharnbrook
Bedford, MK44 1LQ (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
4 January 2005 concerning maintenance of
European patent No. 0907706 in amended form.

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
A. Pignatelli

Summary of Facts and Submissions

- I. The present appeal is from the decision of the Opposition Division concerning the maintenance in amended form of the European patent No. 0 907 706, relating to a soap bar composition.
- II. An appeal was filed against this decision by the Patent Proprietors on 10 March 2005 and by the Opponent on 14 March 2005. The appeal fees were paid on the same date.

The statements of the grounds of appeal were filed on 12 May 2005 and 13 May 2005, respectively.

- III. The Opponent requests that the decision under appeal be set aside and the patent be revoked.

With two faxes dated 6 July 2006 and 21 July 2006, respectively, the Patent Proprietors withdrew all requests submitted with the grounds of appeal, disapproved the text for grant of the patent and invited the Board of Appeal to confirm the revocation of the patent.

Reasons for the Decision

1. The appeals comply with the requirements of Articles 106 to 108 and Rule 64 EPC and are therefore admissible.

2. Article 113(2) EPC requires that the EPO confines the examination of a European patent and its decisions on this patent only in the text submitted to it or agreed by the Patent Proprietor. In the absence of such a version of the text, one of the substantive requirements for maintaining the patent is lacking (see T 73/84, OJ EPO 1985, 241, points 2 and 3 of the reasons; T 157/85, points 2 and 3 of the reasons).

The Patent Proprietors/Appellants, in their faxes dated 6 July 2006 and 21 July 2006, respectively, requested the revocation of the patent.

The request for revocation by the Patent Proprietors/Appellants is constantly interpreted by the Boards of Appeal as a disapproval of the given text of the claims (see Case Law of the Boards of Appeal of the EPO, 4th ed. VII.D.11.3, pages 540 and 541)

The Board considers that this interpretation is justified also in the present case and that with their declaration the Patent Proprietors have withdrawn their agreement to the text of the patent found acceptable by the Opposition Division and are not willing to submit any other text. A text of the patent agreed by the Patent Proprietors is therefore missing.

3. Since the absence of a valid text of the patent precludes the possibility to maintain the patent, the Board has to order its revocation.

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:

G. Rauh

P.-P. Bracke