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**Datasheet for the decision  
of 1 October 2013**

**Case Number:** T 1404/09 - 3.3.07

**Application Number:** 01959912.5

**Publication Number:** 1267829

**IPC:** A61K9/00, A61K9/20

**Language of the proceedings:** EN

**Title of invention:**

FAST DISSOLVING ORALLY CONSUMABLE FILMS CONTAINING AN ION  
EXCHANGE RESIN AS A TASTE MASKING AGENT

**Patent Proprietor:**

McNeil-PPC, Inc.

**Opponent:**

Dey, Michael

**Headword:**

FAST DISSOLVING ORALLY CONSUMABLE FILMS CONTAINING AN ION  
EXCHANGE RESIN AS A TASTE MASKING AGENT/McNeil-PPC, Inc.

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

**Decisions cited:**

**Catchword:**

Withdrawal of approval of the text



**Beschwerdekammern  
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Chambres de recours**

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Case Number: T 1404/09 - 3.3.07

**D E C I S I O N  
of Technical Board of Appeal 3.3.07  
of 1 October 2013**

**Appellant:** McNeil-PPC, Inc.  
(Patent Proprietor) 1 Johnson & Johnson Plaza  
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**Representative:** Mercer, Christopher Paul  
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**Appellant:** Dey, Michael  
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**Representative:** Dey, Michael  
Weickmann & Weickmann  
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Richard-Strauss-Strasse 80  
81679 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
23 April 2009 concerning maintenance of the  
European Patent No. 1267829 in amended form.**

**Composition of the Board:**

**Chairman:** J. Riolo  
**Members:** D. Boulois  
P. Schmitz

## **Summary of Facts and Submissions**

- I. In its decision given at the oral proceedings on 10 March 2009 and issued in writing on 23 April 2009, the Opposition Division held that the patent was to be maintained in amended form.
- II. On 22 June 2009, the opponent filed an appeal against the Opposition Division's decision, requesting that the decision under appeal be set aside and the patent be revoked. The appeal fee was paid on the same day. The statement of grounds of appeal was filed on 21 August 2009.
- III. On 3 July 2009, the patent proprietor filed an appeal and paid the appeal fee on the same day. The statement of grounds of appeal was received on 2 September 2009.
- IV. On 6 June 2013, the Board issued a summons to oral proceedings to be held on 11 October 2013.
- V. In a letter dated 16 September 2013 the patent proprietor stated:  
"...the Proprietor hereby irrevocably withdraws its approval of the text in which the Patent was granted. The proprietor will not be filing a replacement text."
- VI. The Board cancelled the oral proceedings.

## **Reasons for the Decision**

1. The appeals comply with Articles 106 to 108 and Rule 99 EPC and are therefore admissible.
2. Pursuant to Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European

patent or patent application only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

3. In the present case, the patent proprietor unambiguously and unconditionally withdrew its approval of the text in which the patent was maintained by the opposition division. Furthermore, the patent proprietor announced that it would not submit a replacement text.
4. In view of the express declaration of the patent proprietor, there is no version of the European patent having the patent proprietor's consent upon which the Board could decide.

The patent must therefore be revoked (see T 73/84, OJ EPO 1985, 241, points 2 and 3 of the reasons).

### **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:



S. Fabiani

J. Riolo

Decision electronically authenticated