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**Datasheet for the decision  
of 6 September 2012**

**Case Number:** T 1884/11 - 3.3.07

**Application Number:** 06005851.8

**Publication Number:** 1837009

**IPC:** A61K 8/19, A61K 8/27,  
A61Q 11/00

**Language of the proceedings:** EN

**Title of invention:**  
Oral zinc compositions

**Patentee:**  
The Procter & Gamble Company

**Opponent:**  
Colgate-Palmolive Company

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 108  
EPC R. 101(1)

**Keyword:**  
"Form of appeal - statement of grounds filed late - appeal inadmissible"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1884/11 - 3.3.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.07  
of 6 September 2012

**Appellant:**  
(Patent Proprietor)

The Procter & Gamble Company  
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Cincinnati, OH 45202 (US)

**Representative:**

Clemo, Nicholas Graham  
Procter & Gamble Technical Centres Limited  
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**Respondent:**  
(Opponent)

Colgate-Palmolive Company  
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**Representative:**

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted 15 June 2011  
revoking European patent No. 1837009 pursuant  
to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman:** J. Riolo  
**Members:** D. Semino  
D. T. Keeling

## **Summary of Facts and Submissions**

- I. The appeal contests the decision of the Opposition Division of the European Patent Office revoking European patent No. EP-B-1 837 009. The decision was dispatched by registered letter with advice of delivery on 15 June 2011. The appellant - who is the proprietor of the revoked patent - acknowledged receipt of the decision on 20 June 2011. The appellant filed a notice of appeal by fax received on 23 August 2011 and paid the appeal fee on the same date. A statement setting out the grounds of appeal was filed by fax on 26 October 2011. Attached to the statement of grounds was a single page containing hand-written comments by which an employee of the appellant, in response to a communication from the EPO Fax Department informing the appellant that five blank pages had been received, stated that she could not understand how the EPO had come to receive blank pages since the appellant's receipt indicated that the transmission had been effected successfully.
- II. By a communication dated 21 November 2011 and sent by registered post with advice of delivery, the Registrar of the Board informed the appellant that the statement of grounds of appeal had been filed out of time (namely, on 26 October 2011) and that it was therefore to be expected that the appeal would be rejected as inadmissible, pursuant to the third sentence of Article 108 EPC in conjunction with Rule 101(1) EPC. A period of two months was fixed to file observations to that communication.

III. No answer was received within the given time limit to the Registry's communication.

### **Reasons for the Decision**

1. By the terms of the third sentence of Article 108 EPC, a statement setting out the grounds of appeal must be filed, in accordance with the Implementing Regulations, within four months of notification of the decision under appeal. According to Rule 101(1) EPC, the Board must reject the appeal as inadmissible if it does not comply with, *inter alia*, Article 108 EPC, unless the deficiency has been remedied before the relevant period under Article 108 has expired.
2. In the present case the decision under appeal is deemed to have been notified on 25 June 2011 (i.e. on the tenth day following its posting), by virtue of Rule 126(2) EPC. The period for filing a statement of grounds of appeal therefore expired on Tuesday, 25 October 2011. The statement of grounds received on 26 October 2011 was therefore filed out of time. Moreover, the notice of appeal filed on 23 August 2011 contains nothing that could be regarded as a statement of grounds for the purposes of Article 108 EPC.
3. As no written statement setting out the grounds of appeal was filed within the time limit provided by Article 108 EPC, the appeal must be rejected as inadmissible under Rule 101(1) EPC.

**Order**

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

The appeal is rejected as inadmissible.

The Registrar

The Chairman

S. Fabiani

J. Riolo