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# Datasheet for the decision of 20 November 2013

**Case Number:** T 2622/11 - 3.3.06

**Application Number:** 02786582.3

**Publication Number:** 1446472

**IPC:** C11D17/00, C11D17/04

**Language of the proceedings:** EN

**Title of invention:**
Detergent system

**Patent Proprietor:**
The Procter & Gamble Company

**Opponents:**
Henkel AG & Co. KGaA
Unilever N.V.

**Headword:**
Detergent system/PROCTER & GAMBLE

**Relevant legal provisions:**
EPC Art. 113(2)

**Keyword:**
Basis of decision - revocation of the patent at request of the patent proprietor

**Decisions cited:**
T 0186/84

**Catchword:**

Europäisches Patentamt
European Patent Office
Office européen des brevets

**Beschwerdekammern**
**Boards of Appeal**
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**Case Number: T 2622/11 - 3.3.06**

# D E C I S I O N
# of Technical Board of Appeal 3.3.06
# of 20 November 2013

| | |
|---|---|
| **Appellant I:**<br>(Patent Proprietor) | THE PROCTER & GAMBLE COMPANY<br>One Procter & Gamble Plaza<br>Cincinnati, OH 45202 (US) |
| **Representative:** | Samuels, Lucy Alice<br>Gill Jennings & Every LLP<br>The Broadgate Tower<br>20 Primrose Street<br>London<br>EC2A 2ES (GB) |
| **Appellant II:**<br>(Opponent 1) | Henkel AG & Co. KGaA<br>VTP Patente<br>40191 Düsseldorf (DE) |
| **Appellant III:**<br>(Opponent 2) | Unilever N.V.<br>Weena 455<br>3013 AL Rotterdam (NL) |
| **Representative:** | Kan, Jacob Hendrik<br>Unilever N.V.<br>Patent Group<br>Olivier van Noortlaan 120<br>3133 AR Vlaardingen (NL) |
| **Decision under appeal:** | **Interlocutory decision of the Opposition Division of the European Patent Office posted on 2 November 2011 concerning maintenance of the European Patent No. 1446472 in amended form.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairman:** | B. Czech |
| **Members:** | L. Li Voti |
| | U. Lokys |

## Summary of Facts and Submissions

I. The three appeals by the Patent Proprietor (Appellant I) and the two Opponents (Appellants II and III) are from the interlocutory decision of the Opposition Division concerning maintenance of European patent no. 1 446 472 in amended form.

II. In its letter dated 16 October 2013 Appellant I stated that "*the entire bundle of national patents derived from this case has been abandoned through non-payment of maintenance fees. The Proprietor is content that the appeal does not proceed*."

III. In the communication pursuant to Rule 100(2) EPC dated 5 November 2013 the Board indicated inter alia that "*The Proprietor's statement ... could also be understood to mean that the Proprietor is no longer interested at all in the patent in suit.*
*For the sake of procedural efficiency, the Proprietor thus is invited to indicate as soon as possible and within the time limit set by the present communication, whether it requests the revocation of the patent in suit (in this respect see Case Law of the Boards of Appeal of the EPO, 7th edition, 2013, IV.C.5.2, pages 847 and 848).*"

IV. Appellant I stated in its letter of 19 November 2013 that "*With reference to the communication dated 5 November 2013, the Proprietor requests revocation of this Patent.*"

## Reasons for the Decision

1. The appeals are admissible.

2. The request of Appellant I for revocation of its patent implies that the Patent Proprietor withdraws its agreement to the text in which the patent was maintained in amended form by the Opposition Division and that it does not intend to submit any other text for the maintenance of the patent.

3. Article 113(2) EPC, however, stipulates that the EPO may decide upon a European patent only in the text submitted to it or agreed to by the Patent Proprietor. This substantive requirement for maintaining the contested patent is not fulfilled in the present case.

4. Accordingly, it is the established case law of the Boards of Appeal that if the Patent Proprietor itself requests, as in the present case, that the patent be revoked, the patent is to be revoked without a substantive examination of the alleged impediments to patentability (see T 186/84, OJ EPO 1986, 79, point 5 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:

D. Magliano B. Czech

Decision electronically authenticated