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**Datasheet for the decision
of 21 February 2014**

Case Number: T 0448/12 - 3.2.07

Application Number: 03762682.7

Publication Number: 1663809

IPC: B65D65/46

Language of the proceedings: EN

Title of invention:

WATER SOLUBLE CONTAINER

Patent Proprietor:

Obrist Closures Switzerland GmbH

Opponent:

The Procter & Gamble Company

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - revocation of the patent at request of the patent proprietor

Decisions cited:

T 0073/84, T 0186/84

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0448/12 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 21 February 2014

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

Representative: Samuels, Lucy Alice
Gill Jennings & Every LLP
The Broadgate Tower
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Respondent: Obrist Closures Switzerland GmbH
(Patent Proprietor) Römerstrasse 83
4153 Reinach (CH)

Representative: Greenwood, Matthew David
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
28 December 2011 concerning maintenance of the
European Patent No. 1663809 in amended form.**

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
E. Kossonakou

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 1 663 809 in amended form. It requested that the decision under appeal be set aside and the patent be revoked in its entirety. Oral proceedings were requested as an auxiliary measure.
- II. The respondent (patent proprietor) requested at this stage that the decision of the opposition division be upheld, i.e. the dismissal of the appeal, and subsidiarily the maintenance of the patent on the basis of one of the sets of claims filed as first to sixth auxiliary requests. Oral proceedings were requested as an auxiliary measure.
- III. With its communication dated 29 October 2013 the Board notified the parties that according to the information available to the European Patent Office the European Patent No. 1 663 809 had lapsed with effect for all the designated Contracting States. The respondent was requested to confirm within two months from notification of the communication that this was the case. Both parties were informed that if the European patent in question had lapsed in all designated Contracting States the appeal proceedings might be continued at the request of the appellant, provided that within two months from notification of the Board's communication a corresponding request were filed.
- IV. With its letter dated 13 November 2013 the respondent confirmed that the contested patent has lapsed with effect for all the designated Contracting States and that it did not wish to continue with the appeal

proceedings.

- V. With its letter dated 12 December 2013 the appellant expressed its wish to continue with the appeal proceedings.
- VI. With its summons dated 24 January 2014 the Board summoned the parties to oral proceedings.
- VII. With its letter dated 18 February 2014 the respondent stated the following:

"The Proprietor hereby confirms that it no longer approves the text intended for grant"

and

"[w]e request confirmation that the patent is revoked in its entirety and that the Appeal proceedings are closed."

- VIII. On 20 February 2014, the Board cancelled the oral proceedings.

Reasons for the Decision

- 1. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
- 2. Agreement cannot be held to be given if the proprietor without submitting an amended text, expressly states that he no longer approves the text of the patent as granted or as previously amended.

3. In the present case the respondent "*no longer approves the text intended for grant*" and requests "*confirmation that the patent is revoked in its entirety*", see point VII above.

The Board considers the expression that it no longer approves the text intended for grant to mean that the respondent no longer approves the text of the patent as it was intended with the impugned decision **for maintenance** of the patent.

The Board considers the request for confirmation of the revocation to mean that the respondent also withdraws its auxiliary requests previously filed and will not submit any other requests.

4. In such a situation a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see e.g. decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79, reasons point 5).

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. Nachtigall

H. Meinders

Decision electronically authenticated