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**Datasheet for the decision
of 18 January 2018**

Case Number: T 0670/12 - 3.3.01

Application Number: 01950569.2

Publication Number: 1294367

IPC: A61K31/00, A61K31/4164,
A61K31/426, A61K31/662,
A61K31/407, A61K45/06,
A61P1/02, A61Q11/00

Language of the proceedings: EN

Title of invention:

ORAL TOPICAL COMPOSITIONS COMPRISING AN H2 ANTAGONIST TO
PREVENT ATHEROSCLEROSIS

Patent Proprietor:

THE PROCTER & GAMBLE COMPANY

Opponent:

Colgate-Palmolive Company

Headword:

Host-response modulating agent/PROCTER

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0670/12 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 18 January 2018

Appellant 1: THE PROCTER & GAMBLE COMPANY
(Patent Proprietor) One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative: Gillard, Richard Edward
Elkington and Fife LLP
Thavies Inn House
3-4 Holborn Circus
London EC1N 2HA (GB)

Appellant 2: Colgate-Palmolive Company
(Opponent) 909 River Road
P.O. Box 1343
Piscataway NJ 08855-1343 (US)

Representative: Daniels, Jeffrey Nicholas
Page White & Farrer
Bedford House
John Street
London WC1N 2BF (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
2 February 2012 concerning maintenance of the
European Patent No. 1294367 in amended form.

Composition of the Board:

Chairman A. Lindner
Members: M. Pregetter
M. Blasi

Summary of Facts and Submissions

- I. Appeals were lodged both by the patent proprietor (appellant 1) and by the opponent (appellant 2) against the interlocutory decision of the opposition division concerning maintenance of European patent No. 1294367 in amended form.
- II. With the statement of grounds of appeal appellant 1 requested that the decision under appeal be set aside and that the opposition be rejected. Alternatively, it requested maintenance of the patent based on any of auxiliary requests 1 to 8, filed with the statement of grounds of appeal.
- III. With the statement of ground of appeal appellant 2 requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- IV. The board issued a summons to oral proceedings.
- V. With letter dated 4 September 2017 appellant 2 informed the board that it would not attend the oral proceedings. It withdrew its request for oral proceedings and requested that the procedure be continued in writing.
- VI. With letter dated 20 September 2017 appellant 1 withdrew its approval of the text to the patent as granted. It also withdrew all claim requests on file and confirmed that it would not be filing any further requests.
- VII. Oral proceedings were held on 18 January 2018 in the absence of the parties.

VIII. At the end of the oral proceedings, the decision of the board was announced.

Reasons for the Decision

1. The board decided to maintain the date scheduled for oral proceedings and to continue the appeal proceedings in the absence of the duly summoned parties in accordance with Rule 115(2) EPC and Article 15(3) RPBA.
2. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
3. Appellant 1 no longer approves the text in which the patent was granted and has withdrawn all pending claim requests.
4. Therefore, there is no longer any text of the patent in the proceedings on the basis of which the board can consider the appeal. It is established case law that in these circumstances the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition 2016, section IV.C.5.2).

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:



M. Schalow

A. Lindner

Decision electronically authenticated