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**Datasheet for the decision
of 21 September 2021**

Case Number: T 2661/17 - 3.3.06

Application Number: 08164651.5

Publication Number: 2100950

IPC: C11D3/386

Language of the proceedings: EN

Title of invention:

Automatic dishwashing detergent composition

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Henkel AG & Co. KGaA
Dalli-Werke GmbH & Co. KG

Headword:

Dishwashing composition / PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - agreement to text withdrawn by the patent proprietor

Decisions cited:

T 0073/84, T 0186/84, T 1513/16

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 2661/17 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 21 September 2021

Appellant:
(Opponent 1)

Henkel AG & Co. KGaA
Henkelstrasse 67
40589 Düsseldorf (DE)

Representative:

Viering, Jentschura & Partner mbB
Patent- und Rechtsanwälte
Hamborner Straße 53
40472 Düsseldorf (DE)

Appellant:
(Opponent 2)

Dalli-Werke GmbH & Co. KG
Zweifaller Strasse 120
52224 Stolberg (DE)

Representative:

f & e patent
Braunsberger Feld 29
51429 Bergisch Gladbach (DE)

Respondent:
(Patent Proprietor)

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

Representative:

Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 November 2017 concerning maintenance of the
European Patent No. 2100950 in amended form.

Composition of the Board:

Chairman J.-M. Schwaller
Members: L. Li Voti
R. Cramer

Summary of Facts and Submissions

- I. The appeals of opponents 1 and 2 were against the decision of the opposition division to maintain European patent no. 2 100 950 in amended form on the basis of the main request filed by letter dated 7 September 2016.
- II. The appellants requested that the decision under appeal be set aside and the patent be revoked.
- III. The patent proprietor (also respondent) defended the patent as upheld by the opposition division and filed an amended set of claims as auxiliary request 1.
- IV. In advance of the oral proceedings scheduled for 17 September 2021 the board issued a communication under Article 15(1) RPBA 2020 containing its preliminary opinion.
- V. In a letter dated 16 September 2021 the respondent declared the following: *"The proprietor disapproves the text of the patent as maintained and all claim requests on file are withdrawn. We therefore understand that the proceedings are now closed and the oral proceedings scheduled for 17 September will not take place. Accordingly we will send a copy directly to the Registrar by email and to the other parties."*
- VI. Oral proceedings were then cancelled.

Reasons for the Decision

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The patent proprietor by letter of 16 September 2021 has explicitly disapproved the text of the patent as upheld by the opposition division and withdrawn all claim requests on file without filing any other amended text on which further prosecution of the appeal could be based. This disapproval includes thus the text upon which the patent was granted and the text of all the requests filed during the appeal proceedings.

There is thus no text of the patent which can be deemed to be approved by the patent proprietor.

3. It is established case law of the boards of appeal that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see, inter alia, decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 1513/16 and Case Law of the Boards of Appeal of the EPO, 9th edition, 2019, IV.D.2, page 1122).

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:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated