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**Datasheet for the decision  
of 27 November 2020**

**Case Number:** T 1185/18 - 3.3.06

**Application Number:** 07018340.5

**Publication Number:** 2045319

**IPC:** C11D17/00, C11D1/66, C11D3/20,  
C11D3/22, C11D3/37, C11D3/38

**Language of the proceedings:** EN

**Title of invention:**  
Coated detergent composition and manufacture process

**Patent Proprietor:**  
Dalli-Werke GmbH & Co. KG

**Opponent:**  
Henkel AG & Co. KGaA

**Headword:**  
Coated detergent composition and manufacture process/Dalli-  
Werke GmbH & Co. KG

**Relevant legal provisions:**  
EPC R. 84(1)

**Keyword:**  
Lapse of patent in all designated states - Termination of  
appeal proceedings

**Decisions cited:**

T 0329/88, T 0165/95, T 0749/01, T 0436/02, T 0289/06

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1185/18 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 27 November 2020**

**Appellant:** Henkel AG & Co. KGaA  
(Opponent) Henkelstrasse 57  
40589 Düsseldorf (DE)

**Representative:** Henkel AG & Co. KGaA  
CLI Patente  
40191 Düsseldorf (DE)

**Respondent:** Dalli-Werke GmbH & Co. KG  
(Patent Proprietor) Zweifaller Strasse 120  
52224 Stolberg (DE)

**Representative:** f & e patent  
Fleischer, Engels & Partner mbB, Patentanwälte  
Braunsberger Feld 29  
51429 Bergisch Gladbach (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
5 March 2018 concerning maintenance of the  
European Patent No. 2045319 in amended form.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** G. Santavicca  
C. Heath

## **Summary of Facts and Submissions**

- I. The appeal of the opponent lies from the interlocutory decision of the Opposition Division to maintain European Patent No. 2 045 319 in amended form.
- II. By communication of the Board of 8 September 2020, the parties' attention was drawn to the fact that the patent had lapsed with effect for all designated Contracting States. Pursuant to Rules 84(1) and 100(1) EPC, the appellant (opponent) was invited to inform the board, within two months from notification of the communication, whether it requested a continuation of the appeal proceedings lest these would be discontinued.
- III. In a further communication dated 28 September 2020, the appellant's attention was *inter alia* drawn to the fact that, in both the notice of appeal and the statement setting out the grounds of appeal, it had auxiliarily requested oral proceedings before any adverse decision, as well as that such oral proceedings, should these ever took place (depending on whether it intended to continue the opposition proceedings, following the lapse of the patent) would take place on **10 March 2021**. The Board also remarked that it was not apparent from the file that the respondent patent proprietor had ever submitted any response to the notice of appeal, nor taken stance on the statement setting out the grounds of appeal, let alone within the limit of four months set in the Boards of Appeal communication dated 5 July 2018.
- IV. With its reply dated 19 October 2020, the appellant's representative declared that Appellant did not intend

to file a request for continuation of the appeal proceedings. Furthermore, the appellant's representative laid down representation of Appellant.

- V. No reply whatsoever was ever received from the patent proprietor.

### **Reasons for the Decision**

1. Rule 84(1) EPC provides that if "the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States, the opposition proceedings may be continued at the request of the opponent filed within two months of a communication from the European Patent Office informing him of the surrender or lapse". According to Rule 100(1) EPC, Rule 84(1) EPC also applies in opposition appeal proceedings.
2. If no request for continuation of the proceedings is filed within the set time period the appeal proceedings are to be terminated (see decisions **T 329/88** of 22 June 1993; **T 165/95** of 7 July 1997; **T 749/01** of 23 August 2002; **T 436/02** of 25 June 2004; **T 289/06** of 17 December 2007).
3. In the present case, the notification of the lapse within the meaning of Rule 84(1) EPC was sent to the appellant on 8 September 2020. Within the period of two months for requesting continuation of the appeal proceedings ending on 18 November 2020 (Rule 126(2) EPC), the appellant, with letter dated 19 October 2020, unambiguously declared that it did not intend to continue the appeal proceedings.

**Order**

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

The appeal proceedings are terminated.

The Registrar:

The Chairman:



D. Hampe

J.-M. Schwaller

Decision electronically authenticated