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**Datasheet for the decision
of 3 March 2021**

Case Number: T 2985/19 - 3.3.10

Application Number: 11805862.7

Publication Number: 2658509

IPC: A61K8/22, A61Q5/06, A61Q5/10,
A61K8/365

Language of the proceedings: EN

Title of invention:
HAIR COLOURING COMPOSITION COMPRISING GLUCONIC ACID AND/OR ITS
SALTS

Patent Proprietor:
Kao Germany GmbH

Opponent:
Henkel AG & Co. KGaA

Headword:

Relevant legal provisions:
EPC R. 84(1), 100(1)

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

Decisions cited:

T 0520/10

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2985/19 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 3 March 2021

Appellant: Kao Germany GmbH
(Patent Proprietor) Pfungstädter Strasse 92-100
64297 Darmstadt (DE)

Representative: Grit, Mustafa
Kao Germany GmbH
Pfungstädterstrasse 92-100
64297 Darmstadt (DE)

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

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

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 20 September
2019 revoking European patent No. 2658509
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chair P. Gryczka
Members: R. Pérez Carlón
T. Bokor

Summary of Facts and Submissions

- I. European patent EP 2 658 509 was revoked by the opposition division, and has lapsed in all designated states.
- II. The patent proprietor is the sole appellant in these appeal proceedings.
- III. In a communication, the board informed the parties of the lapse of the patent. Under Rule 84(1) EPC, the opposition appeal proceedings could be continued at the request of the opponent, but also upon request of the patent proprietor by way of an analogous application of Rule 84(1) EPC (T 520/10).

Unless such request was filed within two months, the appeal would be terminated without a decision on the merits, and the decision of the opposition division would become final.

- IV. None of the parties requested continuation of the proceedings within this time limit.

Reasons for the Decision

1. The appeal is admissible.

If a European patent has lapsed in all designated contracting states, opposition proceedings may be continued at the request of the opponent (Rule 84(1) EPC).

According to Rule 100(1) EPC, this also applies in opposition appeal proceedings.

If the patent proprietor is the appellant, Rule 84(1) EPC has to be applied by analogy (T 520/10). In the present case, the patent proprietor could thus request that the appeal proceedings be continued.

2. No request in that respect was filed within the time limit set. The proceedings are thus terminated without a decision on the merits of the case (Case Law of the Boards of Appeal, 9th Ed. 2009, III.Q.1.2).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chair:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated