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D E C I S I O N
of 13 October 2000

Case Number: T 1035/98 - 3.3.6

Application Number: 85201380.4

Publication Number: 0174689

IPC: C11D 3/50

Language of the proceedings: EN

Title of invention:
Fragrant liquid cleaning compositions

Patentee:
UNILEVER N.V., et al

Opponent:
Henkel Kommanditgesellschaft auf Aktien
PROCTER & GAMBLE EUROPEAN TECHNICAL CENTER N.V.
S.C. Johnson & Son, Inc.

Headword:
Cleaning compositions/UNILEVER

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Proprietor's request for revocation of the patent"

Decisions cited:
-

Catchword:
-



Case Number: T 1035/98 - 3.3.6

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 13 October 2000

Appellant/other party:
(Opponent)

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(Opponent)

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Appellant/other party:
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Respondent: Unilever PLC
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Representative: Paget, Hugh C.E.
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 8 September
1998 concerning maintenance of European patent
No. 0 174 689 in amended form.

Composition of the Board:

Chairman: P. Krasa
Members: G. Dischinger-Höppler
C. Rennie-Smith

Summary of Facts and Submissions

I. In its decision posted on 8 September 1998, the Opposition Division maintained European patent No. 174 689, granted on the basis of application No. 85 201 380.4, in the amended form of the joint patent proprietors' first auxiliary request. That decision was appealed both by the proprietors who sought to substitute the claims of their main request (as subsequently amended during the appeal proceedings) or alternatively new auxiliary requests, and by all three opponents who sought revocation of the patent. Each of the four parties paid the appeal fee and filed a statement of grounds of appeal.

II. By their representative's letter dated 25 September 2000, received at the EPO on 28 September 2000, the proprietors stated:

"The patentees now wish these proceedings to be discontinued, and the patent to be revoked.

Accordingly, I hereby withdraw the patentees' approval of the text as granted and, if it is necessary to do so, withdraw the patentees' approval of the text as maintained by the Opposition Division. The patentees' request for oral proceedings in the appeal is withdrawn. The EPO is invited to revoke the patent."

Reasons for the Decision

1. All the appeals are admissible.

2. Article 113(2) EPC provides that a patent may only be maintained in a version approved by the patent proprietor. If the proprietor makes clear that he no longer approves the text in which the patent was granted and will not be submitting any alternative text, the appeal proceedings have to be terminated by a decision ordering revocation of the patent. Since there is no longer a version of the patent to which the proprietor's approval attaches, one of the substantive requirements for maintenance of the patent is missing. This is established case-law of the Boards of Appeal, which have also held that the form of words used may differ so long as the disapproval of any version is indicated. Thus a request by a proprietor for revocation of its patent has the same effect as withdrawal of its approval of the text of the patent. (See the summary of the relevant case-law at pages 499 to 500 of "Case Law of the Boards of Appeal of the European Patent Office", 3rd edition (English text), 1998.)

3. In the present case, the words used by the proprietors of the patent in suit (see II above) are more than adequate to indicate not only that they no longer approve the text in which the patent was granted or that in which it was maintained by the Opposition Division but also, since they request revocation of the patent, that there is no alternative version they will approve. Accordingly, the patent must be revoked.

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. Rauh

P. Krasa