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D E C I S I O N
of 9 April 2002

Case Number: T 0163/99 - 3.3.4

Application Number: 90200336.7

Publication Number: 0383404

IPC: C07H 13/06

Language of the proceedings: EN

Title of invention:

Process for the synthesis of polyol fatty-acid esters

Patentee:

UNILEVER N.V., et al

Opponent:

The Procter & Gamble Company

Headword:

Fatty-acid esters/UNILEVER

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"-missing of claims on the basis of which to assess patentability"

Decisions cited:

-

Catchword:

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Case Number: T 0163/99 - 3.3.4

D E C I S I O N
of the Technical Board of Appeal 3.3.4
of 9 April 2002 9 April 2002

Appellant: UNILEVER N.V.
(Proprietor of the patent) Weena 455
NL-3013 AL Rotterdam (NL)

Representative: Wildschut, G.A.
UNILEVER N.V.
Patent Division
P.O. Box 137
NL-3130 AC Vlaardingen (NL)

Respondent: The Procter & Gamble Company
(Opponent) One Procter & Gamble Plaza
Cincinnati, OHIO 45202 (US)

Representative: Samuels, Lucy Alice
Gill Jennings & Every
Broadgate House
7 Eldon Street
London EC2M 7LH (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 9 December 1998
revoking European patent No. 0 383 404 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairwoman: U. M. Kinkeldey
Members: F. L. Davison-Brunel
S. U. Hoffmann

Summary of Facts and Submissions

- I. In a decision dated 9 December 1998, the Opposition Division revoked the patent No. 0 383 404 with the title "Process for the synthesis of polyol fatty-acid esters".
- II. With their letter dated 12 January 1999, the Appellants (Patentees) filed a notice of appeal. They paid the appeal fee and submitted a statement of grounds of appeal on 2 April 1999. They requested that the patent be maintained on the basis of the main request attached to the decision of the Opposition Division, alternatively, on the basis of Auxiliary request I submitted together with the statement of grounds of appeal.
- III. In a letter received on 28 February 2002, the Appellants informed the Board that *"the appellant has the opinion that neither the claims of the main request, nor the claims of the auxiliary request nor the specification that are on file are suitable for patenting and that **these claims are herewith withdrawn.**" (emphasis added).*

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. In accordance with Article 113(2) EPC, *"the European Patent Office shall consider and decide upon the European patent application or the European patent only*

in the text submitted to it, or agreed, by the applicant for or proprietor of the patent."

3. In the present case, the Appellants have abstained from withdrawing both the appeal and the patent. Yet, with their letter received on 28 February 2002, they have withdrawn all claims. This course of action entails that, pursuant to Article 113(2) EPC, there no longer exists a basis for the assessment of patentability. In the absence of an approved version of the specification and claims, the patent does not meet the requirements of the EPC (Article 97(1) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:

P.Cremona

U. Kinkeldey