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**Datasheet for the decision
of 22 October 2012**

Case Number: T 1674/10 - 3.3.06

Application Number: 03773718.6

Publication Number: 1555984

IPC: B01F 17/00

Language of the proceedings: EN

Title of invention:

Process for dissolving lipophilic compounds and cosmetic composition

Patentee:

L'Oréal

Opponent:

BASF SE

Headword:

Process for dissolving lipophilic compounds/L'OREAL

Relevant legal provisions (EPC 1973):

EPC Art. 113(2)

Keyword:

"No text of the patent approved by the proprietor - revocation"

Decisions cited:

T 0073/84

Catchword:

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Case Number: T 1674/10 - 3.3.06

DECISION
of the Technical Board of Appeal 3.3.06
of 22 October 2012

Appellant: BASF SE
(Opponent) D-67056 Ludwigshafen (DE)

Representative: Niedenbrück, Matthias
BASF SE
Global Intellectual Property
GVX - C6
D-67056 Ludwigshafen (DE)

Respondent: L'Oréal
(Patent Proprietor) 14, rue Royale
F-75008 Paris (FR)

Representative: Martin-Charbonneau, Virginie
Casalonga & Partners
Bayerstraße 71-73
D-80335 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
25 May 2010 concerning maintenance of the
European patent No. 155984 in amended form.

Composition of the Board:

Chairman: P.-P. Bracke
Members: P. Ammendola
J. Geschwind

Summary of Facts and Submissions

I. This appeal is directed against the decision of the Opposition Division dated 25 May 2010 that the European patent No. 1 555 984 amended according to the then pending main request of the Patent Proprietor met the requirements of the EPC.

II. On 5 August 2010 the EPO received the Opponent's notice of appeal against this decision as well as the corresponding fee. The statement of grounds was received by the EPO on 29 September 2010.

The Patent Proprietor/Respondent replied with a letter dated 6 January 2011 declaring that it did approve the patent neither in the granted version nor in the amended version considered in the decision under appeal.

III. The Opponent/Appellant requested in writing that the decision under appeal be set aside and the patent be revoked. It also requested oral proceedings prior of any decision other than this.

Reasons for the decision

In the present case, a decision of the Opposition Division has been appealed by the Opponent/Appellant who requests revocation of the patent. This appeal is admissible. A decision must, thus, be taken.

The Patent Proprietor/Respondent has declared to approve neither the text of the patent as granted nor that of the

amended patent found to meet the requirements of the EPC in the decision under appeal.

Consequently, the Board has no basis on which to make a decision on patentability as would be required by Article 113(2) EPC.

According to the established case law of the Boards of Appeal (see e.g. T 73/84, OJ EPO 1985, 241), if the Proprietor of a European patent states in opposition or appeal proceedings that he no longer approves the text in which the patent was granted and does not submit an amended text, the patent is to be revoked. In the Board's judgment, this finding also applies in the present case. The patent is, thus, revoked.

Summoning oral proceedings is not necessary as the decision is in line with the Opponent/Appellant's request.

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:

D. Magliano

P.-P. Bracke