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**Datasheet for the decision
of 10 April 2018**

Case Number: T 0220/15 - 3.3.06

Application Number: 06763545.8

Publication Number: 1891194

IPC: C11D3/37, C11D3/22, C11D3/42,
C11D3/34, C07D251/68,
D06M13/358

Language of the proceedings: EN

Title of invention:
LAUNDERING PROCESS FOR WHITENING SYNTHETIC TEXTILES

Patent Proprietor:
BASF SE

Opponent:
The Procter & Gamble Company

Headword:
Laundering process for whitening synthetic textiles/ BASF SE

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84, T 1536/14, T 0459/88

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0220/15 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 10 April 2018

Appellant I: BASF SE
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67056 Ludwigshafen am Rhein (DE)

Representative: Zumstein, Angela
Maiwald Patentanwalts GmbH
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80335 München (DE)

Appellant II: The Procter & Gamble Company
(Opponent) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

Representative: Peet, Jillian Wendy
Procter & Gamble Technical Centres Limited
Whitley Road
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 November 2014 concerning maintenance of the
European Patent No. 1891194 in amended form.**

Composition of the Board:

Chairman L. Li Voti
Members: P. Ammendola
J. Hoppe

Summary of Facts and Submissions

- I. Both the Patent Proprietor and the sole Opponent lodged appeals against the decision of the opposition division concerning the maintenance of the European patent No. EP 1 891 194 in amended form according to the then pending First Auxiliary Request.
- II. The Board issued a summons to oral proceedings to be held on 4 May 2018.
- III. In a letter of 13 March 2018 the Proprietor wrote the following:

"The proprietor herewith abandons the above identified European patent. Therefore, the approval of the text as granted is herewith withdrawn. In addition, the appeal filed on January 15, 2015 likewise is withdrawn. Accordingly, we will not attend the hearing scheduled for May 4, 2018."

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon the European patent only in the text submitted to it, or agreed by the Proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the Proprietor expressly states that it no longer approves the text of the patent as granted and announces to abandon the patent, because this clearly demonstrates that the Proprietor requests that the patent is revoked.

3. From the Proprietor's letter of 13 March 2018 (see section III, *supra*) it is apparent that in the present case the Proprietor, beside explicitly no longer approving the text of the patent as granted, wishes to abandon the patent as such and thus does no longer request maintenance of the patent in any other form.
4. Therefore also in this case there is no text of the patent on the basis of which the Board can consider the appeal and this clearly demonstrates that the Proprietor implicitly requests that the Patent be revoked.
5. It is established case law that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see decisions T 73/84, OJ EPO 1985, 241 and T 1536/14, unpublished). Indeed, in such a situation the patent has to be revoked because there does not exist a public interest to maintain a patent against the Proprietor's will (T 459/88, OJ EPO 1990, 425, reasons 5).
6. The Board has no reason in the present case to deviate from the consistent approach of the Boards of Appeal.

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

L. Li Voti

Decision electronically authenticated