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**Datasheet for the decision  
of 17 September 2018**

**Case Number:** T 1517/15 - 3.3.06

**Application Number:** 10167235.0

**Publication Number:** 2399980

**IPC:** C11D3/22, C11D3/386, C11D17/00

**Language of the proceedings:** EN

**Title of invention:**  
Stable compositions comprising cationic cellulose polymer and cellulase

**Patent Proprietor:**  
The Procter & Gamble Company

**Opponent:**  
Henkel AG & Co. KGaA

**Headword:**  
Stable compositions/PG Company

**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Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked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 1517/15 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 17 September 2018**

**Appellant:** Henkel AG & Co. KGaA  
(Opponent) Henkelstrasse 57  
40589 Düsseldorf (DE)

**Representative:** Henkel AG & Co. KGaA  
CLI Patents  
Z01  
40191 Düsseldorf (DE)

**Respondent:** The Procter & Gamble Company  
(Patent Proprietor) One Procter & Gamble Plaza  
Cincinnati, OH 45202 (US)

**Representative:** Pickford, James Lawrence  
Procter & Gamble  
Technical Centres Limited  
Whitley Road  
Longbenton  
Newcastle upon Tyne NE12 9TS (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 20 May 2015  
rejecting the opposition filed against European  
patent No. 2399980 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** L. Li Voti  
C. Brandt

### **Summary of Facts and Submissions**

- I. The sole opponent lodged an appeal against the decision of the opposition division rejecting the opposition filed against European Patent No. 2399980.
- II. In reply, the respondent (patent proprietor) requested that the appeal be dismissed and that the patent be maintained as granted.
- III. The Board issued a summons to oral proceedings to be held on 31 October 2018 and subsequently a communication in which it indicated its preliminary opinion.
- IV. In a letter of 31 August 2018 the proprietor wrote the following:  
  
"The Applicant hereby withdraws their approval of the text of the patent as granted.  
For the avoidance of any doubt, the Applicant withdraws their request for oral proceedings and will not attend the oral proceedings."  
  
V. The oral proceedings were cancelled.

### **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, because this clearly demonstrates that the proprietor implicitly requests that the patent be revoked.

3. From the proprietor's letter of 31 August 2018 (see section IV, supra) it is apparent that in the present case the proprietor, beside explicitly no longer approving the text of the patent as granted, does no longer request maintenance of the patent in any other form.
4. Therefore there is no text of the patent on the basis of which the Board can consider the appeal.
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; 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, No. 5 of the reasons).
6. The Board has no reason in the present case to deviate from the consistent approach of the Boards of Appeal, with the consequence that the patent has to 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:



D. Magliano

J.-M. Schwaller

Decision electronically authenticated