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**Datasheet for the decision
of 18 September 2020**

Case Number: T 2663/17 - 3.3.06

Application Number: 08164650.7

Publication Number: 2100949

IPC: C11D3/386

Language of the proceedings: EN

Title of invention:

Automatic dishwashing detergent composition

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Henkel AG & Co. KGaA
Novozymes A/S
Dalli-Werke GmbH & Co. KG

Headword:

Dishwashing detergent composition / PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - agreement to text withdrawn by patent proprietor

Decisions cited:

T 0073/84, T 0186/84, T 1513/16

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 2663/17 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 18 September 2020

Appellant: Henkel AG & Co. KGaA
(Opponent 1) Henkelstrasse 67
40589 Düsseldorf (DE)

Representative: Viering, Jentschura & Partner mbB
Patent- und Rechtsanwälte
Hamborner Straße 53
40472 Düsseldorf (DE)

Appellant: Dalli-Werke GmbH & Co. KG
(Opponent 3) Zweifaller Strasse 120
52224 Stolberg (DE)

Representative: f & e patent
Fleischer, Engels & Partner mbB, Patentanwälte
Braunsberger Feld 29
51429 Bergisch Gladbach (DE)

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

Representative: Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Party as of right: Novozymes A/S
(Opponent 2) Krogshøjvej 36
2880 Bagsværd (DK)

Representative: Potter Clarkson
The Belgrave Centre
Talbot Street
Nottingham NG1 5GG (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 October 2017 maintaining European Patent No.
2100949 in amended form.

Composition of the Board:

Chairman J.-M. Schwaller
Members: L. Li Voti
R. Cramer

Summary of Facts and Submissions

- I. The appeals of opponents 1 and 3 are against the decision of the opposition division to maintain European patent No. 2 100 949 in amended form .
- II. The appellants requested that the decision under appeal be set aside and the patent be revoked.
- III. The patent proprietor (also respondent) defended the patent in the version maintained by the opposition division. It also filed various auxiliary requests.
- IV. In advance of the oral proceedings scheduled for 28 September 2020 the board issued a communication under Article 15(1) RPBA 2020 containing its preliminary opinion.
- V. In a letter dated 8 September 2020 the respondent declared the following: "We disapprove the text of the above patent".
- VI. Oral proceedings were then cancelled.

Reasons for the Decision

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The patent proprietor by letter of 8 September 2020 has explicitly disapproved the text of the patent without

filing any other amended text on which further prosecution of the appeal could be based. This disapproval includes thus the text upon which the patent was granted as well as the text in which it was maintained by the opposition division and the text of all the requests filed during the appeal proceedings.

There is thus no text of the patent which can be deemed to be approved by the patent proprietor.

3. It is established case law of the boards of appeal 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, inter alia, decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 1513/16 and Case Law of the Boards of Appeal of the EPO, 9th edition, 2019, IV.D.2, page 1122).
4. The patent in suit is thus to be revoked.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated