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**Datasheet for the decision  
of 2 April 2019**

**Case Number:** T 2680/17 - 3.3.02

**Application Number:** 11706831.2

**Publication Number:** 2683235

**IPC:** A01N25/16, A01N25/30,  
A01N31/02, A01N41/02, A47K5/14,  
A61Q19/10, A61K8/04

**Language of the proceedings:** EN

**Title of invention:**  
LOW ALCOHOL ANTIMICROBIAL CLEANSING COMPOSITION

**Patent Proprietor:**  
SCA Hygiene Products AB

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

**Headword:**  
Antimicrobial cleansing composition/SCA

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
Withdrawal of the approval to the text of the patent as  
granted - revocation of the patent

**Decisions cited:**

T 0073/84, T 0655/11, T 0220/12, T 0381/12

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 2680/17 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 2 April 2019**

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

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

**Respondent:** SCA Hygiene Products AB  
(Patent Proprietor) 405 03 Göteborg (SE)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**25 October 2017 concerning maintenance of the**  
**European Patent No. 2683235 in amended form.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** L. Bühler  
S. Bertrand

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

- I. By way of its interlocutory decision, the opposition division found that European Patent No. 2 683 235 as amended met the requirements of the European Patent Convention.
- II. The opponent (appellant) filed an appeal against this decision requesting revocation of the patent.
- III. The patent proprietor (respondent) requested dismissal of the appeal as a main request and submitted auxiliary requests 1 to 8.
- IV. With letter dated 28 March 2019, the respondent disapproved the text of the granted patent, indicating that it would not be submitting an amended text and that it expected the patent to be revoked. The request for oral proceedings was also withdrawn.

### **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be observed also in opposition and opposition appeal proceedings.
2. The respondent, by withdrawing approval of the text of the granted patent, indicating that it would not be submitting an amended text and expecting the patent to be revoked, has thereby withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the

patent proprietor's will. There is therefore no text of the patent, on the basis of which the Board can maintain the patent.

3. In view of the above, the Board concludes that the patent must be revoked as envisaged in Article 101 EPC and also expected by the respondent. This conclusion is also in line with established case law following decision T 73/84, OJ 1985, 241 (see e.g. T 655/11 of 11 November 2005; T 220/12 of 22 June 2015; T 381/12 of 3 January 2018).

## 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:



N. Maslin

M. O. Müller

Decision electronically authenticated