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**Datasheet for the decision
of 12 October 2021**

Case Number: T 0184/18 - 3.3.10

Application Number: 09791447.7

Publication Number: 2318356

IPC: C07C231/08, C07C233/57,
A61K8/41, A61Q11/00

Language of the proceedings: EN

Title of invention:

SYNTHESIS OF CYCLOHEXANE DERIVATIVES USEFUL AS SENSATES IN
CONSUMER PRODUCTS

Patent Proprietor:

The Procter & Gamble Company

Opponent:

Givaudan Schweiz AG

Headword:

Relevant legal provisions:

RPBA 2020 Art. 13(2)
EPC Art. 111(1)

Keyword:

Amendment after summons - taken into account (yes)

Main request - allowable (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0184/18 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 12 October 2021

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

Representative: Elkington and Fife LLP
Prospect House
8 Pembroke Road
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Appellant: Givaudan Schweiz AG
(Opponent) Überlandstrasse 138
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Representative: Haseltine Lake Kempner LLP
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
7 November 2017 concerning maintenance of the
European Patent No. 2318356 in amended form.**

Composition of the Board:

Chair P. Gryczka
Members: R. Pérez Carlón
T. Bokor

Summary of Facts and Submissions

I. The opponent and the patent proprietor appealed the opposition division's decision on the maintenance of European patent No. 2 318 356 in the form of the third auxiliary request then pending.

II. At the oral proceedings before the board on 12 October 2021, objections of lack of novelty and inventive step of the subject-matter of the main request and of auxiliary requests 1 to 13, all filed with a letter dated 23 June 2020, were discussed. The board concluded that none of these requests was allowable.

The appellant-patent proprietor withdrew these requests. The request filed as auxiliary request 14 with a letter dated 23 June 2020 became thus its main request.

III. The appellant-opponent had no objection against the main request.

IV. The parties did not object that the case be remitted to the opposition division for adapting the description to the claims of the main request.

V. At the end of the oral proceedings, the decision was announced.

Reasons for the Decision

1. The appeal is admissible.

2. The main request was filed as auxiliary request 14 with a letter dated 23 June 2020, after the summons to oral proceedings dated 6 February 2020. Its admissibility is thus governed by Article 13(2) RPBA.

The appellant-opponent requested in writing non-admission of the request filed as auxiliary request 14. This objection was however not pursued at the oral proceedings.

The appellant-patent proprietor argued in its letter of 23 June 2020 and at the oral proceedings before the board that the main request solved every outstanding issue. This was undisputed.

3. Furthermore, the board is satisfied that the claims of this request (processes of claims 1 to 9 and the neoisomers of claims 11 and 12 of the claim set found allowable by the opposition division) were not subject of the appeal of either the proprietor or the opponent. Restricting a party's case to such subject-matter is not considered as an amendment for the regulatory purposes of Article 13(2) RPBA.

Under these circumstances, the board admits the main request into the proceedings.

4. The appellant-opponent confirmed at the oral proceedings before the board that it had no objection against this request, and the board sees no basis for examining the claims of this request on its own motion.
5. The description contains subject-matter not encompassed by the claims of the main request. It thus requires amendment (Article 84 EPC). The board decided to make use of its discretion to remit the case to the

opposition division for the description to be adapted (Article 111(1) EPC). None of the partes objected to the remittal.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to maintain the patent with the following claims and a description to be adapted thereto:

Claims No. 1 to 11 of the main request, filed as Auxiliary request 14 with letter dated 23 June 2020.

The Registrar:

The Chair:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated