

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 9 December 2021**

**Case Number:** T 3007/18 - 3.3.02

**Application Number:** 13730418.4

**Publication Number:** 2858492

**IPC:** A01N25/06, A61K8/19, A61K8/25,  
A61K8/26, A61K8/29, A61K8/73,  
A01N37/18, A61Q17/02, A01P17/00

**Language of the proceedings:** EN

**Title of invention:**  
SPRAY FORMULATIONS WITH REDUCED CLOGGING/SEDIMENTATION  
CHARACTERISTICS

**Patent Proprietor:**  
S.C. Johnson & Son, Inc.

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

**Headword:**

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

**Keyword:**

Basis of decision - revocation of the patent at request of the patent proprietor

**Decisions cited:**

T 0073/84, T 0186/84, T 0463/90, T 0798/90, T 0014/99,  
T 1844/17

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 3007/18 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 9 December 2021**

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

**Representative:** LKGLOBAL  
Lorenz & Kopf PartG mbB Patentanwälte  
Brienner Straße 11  
80333 München (DE)

**Respondent:** S.C. Johnson & Son, Inc.  
(Patent Proprietor) 1525 Howe Street  
Racine, WI 53403 (US)

**Representative:** Ruschke, Hans Edvard  
Ruschke Madgwick Seide & Kollegen  
Patentanwälte Patent Attorney (UK) PartG mbB  
Postfach 86 06 29  
81633 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 17 October 2018  
rejecting the opposition filed against European  
patent No. 2858492 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** L. Bühler  
**Members:** M. Maremonti  
A. Lenzen

## **Summary of Facts and Submissions**

- I. The appeal by the opponent ("appellant") lies from the decision of the opposition division to reject the opposition against European patent No. 2 858 492 ("the patent").
- II. In its statement of grounds of appeal, the appellant requested that the appealed decision be set aside and that the patent be revoked.
- III. In its reply to the statement of grounds of appeal, the the patent proprietor requested that the appeal be dismissed. Alternatively, it requested that the patent be maintained on the basis of the claims of one of auxiliary requests I to III as filed before the opposition division on 21 August 2018.
- IV. The board summoned the parties to oral proceedings to be held on 14 December 2021.
- V. By letter dated 1 December 2021, the patent proprietor withdrew its request for oral proceedings. It also withdrew all requests on file and requested revocation of the patent.
- VI. By communication dated 7 December 2021, the board cancelled the oral proceedings.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. Since the patent proprietor withdrew all requests on file and requested revocation of the patent, there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the boards of appeal (see T 0073/84, OJ EPO 1985, page 241, T 0186/84, OJ EPO 1986, page 79, T 0798/90, T 0463/90, T 0014/99, T 1844/17) that, under these circumstances, the patent is to be revoked without further substantive examination. There are also no ancillary issues that would have to be dealt with by the board in the present case.

## Order

### **For these reasons it is decided that:**

1. The appealed decision is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



N. Maslin

L. Bühler

Decision electronically authenticated