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**Datasheet for the decision
of 20 October 2022**

Case Number: T 0476/19 - 3.2.06

Application Number: 10012740.6

Publication Number: 2319361

IPC: A46B5/00, A46B9/02, A46B9/04

Language of the proceedings: EN

Title of invention:
Toothbrush

Patent Proprietor:
Procter & Gamble Business
Services Canada Company

Opponent:
Trisa Holding AG

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

Catchword:



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Case Number: T 0476/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 20 October 2022

Appellant: Trisa Holding AG
(Opponent) Kantonsstrasse 31
6234 Triengen (CH)

Representative: Schaad, Balass, Menzl & Partner AG
Bellerivestrasse 20
Postfach
8034 Zürich (CH)

Respondent: Procter & Gamble Business
(Patent Proprietor) Services Canada Company
1959 Upper Water Street
Suite 800, P.O. Box 997
Nova Scotia, Halifax B3J 2X2 (CA)

Representative: Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 December 2018 concerning maintenance of the
European Patent No. 2319361 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Dorfstätter
J. Hoppe

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division, in which it found that, account being taken of the amendments made, European patent No. 2 319 361 met the requirements of the EPC.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. The respondent (patent proprietor) requested that the appeal be rejected and the patent be maintained in amended form.
- IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion on several matters of the case.
- V. In a first letter closely before the date of the oral proceedings, the respondent withdrew its request for oral proceedings. In a second letter it also withdrew all pending requests and its approval of the text of the patent as granted. It also requested revocation of the patent.
- VI. The oral proceedings were subsequently cancelled.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon a European patent only in the text submitted to it, or agreed, by the patent proprietor. Such an agreement cannot be deemed to exist where the patent proprietor states that it no longer approves the

text of the patent, withdraws all pending requests, and proposes no text for maintenance of the patent. In the present case, the respondent also explicitly requested revocation of the patent. In the given context it is thus clear from this statement that no text for maintenance is approved.

2. In such a case, there is no text of the patent on the basis of which the Board can consider the appeal. Under these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see e.g. Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.2).

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. Grundner

M. Harrison

Decision electronically authenticated