

Internal distribution code:

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

**Datasheet for the decision
of 14 January 2022**

Case Number: T 1611/19 - 3.3.07

Application Number: 05824886.5

Publication Number: 1838275

IPC: A61K8/97, A61Q11/00

Language of the proceedings: EN

Title of invention:

OXIDATION RESISTANT DENTIFRICE COMPOSITIONS

Patent Proprietor:

Colgate-Palmolive Company

Opponent:

The Procter & Gamble Company

Headword:

OXIDATION RESISTANT DENTIFRICE COMPOSITIONS/Colgate-Palmolive
Company

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

No text agreed by the patent proprietor - revocation of the
patent

Decisions cited:

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 1611/19 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 14 January 2022

Appellant: The Procter & Gamble Company
(Opponent) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

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

Respondent: Colgate-Palmolive Company
(Patent Proprietor) 300 Park Avenue
New York, NY 10022 (US)

Representative: Wibbelmann, Jobst
Wuesthoff & Wuesthoff
Patentanwälte PartG mbB
Schweigerstrasse 2
81541 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 26 March 2019
rejecting the opposition filed against European
patent No. 1838275 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman E. Duval
Members: D. Boulois
Y. Podbielski

Summary of Facts and Submissions

- I. European patent No. 1 838 275 was granted on the basis of a set of 17 claims.
- II. An opposition was filed against the granted patent under Article 100 (a) and (b) EPC on the grounds that its subject-matter lacked novelty and inventive step, and was not sufficiently disclosed.
- III. The present appeal lies from the decision of the opposition division to reject the opposition (Article 101(2) EPC).
- IV. The opponent (hereinafter the appellant) filed an appeal against said decision.
- V. In its reply to the statement of grounds of appeal dated 6 December 2019, the patent proprietor (hereinafter the respondent) requested to dismiss the appeal and to uphold the decision of the opposition division and maintain the patent as granted. As an auxiliary measure, the respondent requested to maintain the patent on the basis of one of auxiliary requests 1-4 filed with the letter of 10 December 2018. Oral proceedings were also requested.
- VI. The board summoned the parties to oral proceedings.
- VII. In a letter dated 10 December 2021 sent in response to the summons to attend the oral proceedings, the respondent withdrew its approval of the text in which the patent was granted. The respondent further withdrew all pending requests filed with the reply to the appeal.

VIII. Oral proceedings scheduled for 22 March 2022 were cancelled by the Board.

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. 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 and withdrawing all pending claim requests, has 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. Thus, a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office 9th edition, 2019, 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:



B. Atienza Vivancos

E. Duval

Decision electronically authenticated