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**Datasheet for the decision
of 17 May 2022**

Case Number: T 3130/19 - 3.3.06

Application Number: 13177807.8

Publication Number: 2660309

IPC: C11D3/386

Language of the proceedings: EN

Title of invention:

Automatic dishwashing detergent composition

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Dalli-Werke GmbH & Co. KG
BASF SE
UNILEVER N.V. / UNILEVER PLC

Headword:

Automatic dishwashing detergent/P & G

Relevant legal provisions:

EPC Art. 104(1), 113(2)
RPBA 2020 Art. 15a

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked
Apportionment of costs - (no)

Decisions cited:

T 0937/04, T 0490/05, T 0258/13, T 2377/13, T 0105/14,
T 0280/15

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 3130/19 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 17 May 2022

Appellant:
(Opponent 1)

Dalli-Werke GmbH & Co. KG
Zweifaller Strasse 120
52224 Stolberg (DE)

Representative:

f & e patent
Braunsberger Feld 29
51429 Bergisch Gladbach (DE)

Appellant:
(Opponent 2)

BASF SE
Carl-Bosch-Str. 38
67056 Ludwigshafen am Rhein (DE)

Representative:

BASF IP Association
BASF SE
G-FLP-C006
67056 Ludwigshafen (DE)

Appellants:
(Opponents 3)

UNILEVER N.V. / UNILEVER PLC
Weena 455/100 Victoria Embankment
3013 AL Rotterdam/London, Greater London EC4Y 0DY
(NL)

Representative:

van Benthum, Wilhelmus A. J.
Unilever N.V.
Unilever Patent Group
Bronland 14
6708 WH Wageningen (NL)

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

Representative: Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
31 October 2019 concerning maintenance of the
European Patent No. 2660309 in amended form.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: R. Cramer
L. Li Voti

Summary of Facts and Submissions

- I. The appeals of the patent proprietor and of opponents 1, 2 and 3 were directed against the decision of the opposition division to maintain European patent 2 660 309 in amended form.
- II. After having summoned the parties to oral proceedings to take place on 17 May 2022, the proprietor's representative requested on 3 May 2022 that the proceedings be held as a videoconference in view of the coronavirus situation, in particular to avoid a last minute postponement if one of the parties were positively tested when wishing to enter the EPO premises. The same day the board's registrar forwarded the proprietor's letter by e-mail to the other parties, and informed them that the board had decided to conduct the oral proceedings by videoconference.
- III. At the start of the oral proceedings, the patent proprietor requested that the patent be maintained in amended form and the opponents requested that the patent be revoked. Opponents 3 further requested an apportionment of costs in view of the late request by the patent proprietor to conduct the oral proceedings by videoconference. They explained in particular that they had booked non-refundable flight tickets in the expectation that the oral proceedings would be held in person.

After discussion of the requests on file with the parties and after having heard the board's conclusion on these requests, the patent proprietor withdrew its appeal and all its requests. The opponents maintained

their appeals and opponents 3 maintained their request for apportionment of costs.

Reasons for the Decision

1. The board notes that since the patent proprietor withdrew all its requests, there is no text submitted or agreed by the patent proprietor on the basis of which the patent could be maintained (Article 113(2) EPC). The patent is therefore to be revoked.
2. As regards the costs, in principle each party to appeal proceedings shall bear their own costs. However, the board may, for reasons of equity, order a different apportionment of costs (Article 104(1) EPC).
3. Opponents 3 argued that for reasons of equity the patent proprietor should be ordered to reimburse the costs of the non-refundable flight tickets for the two representatives who had announced their presence at the oral proceedings, because as a matter of courtesy and practice, a party should announce at the latest one month in advance of the date set for oral proceedings whether they would attend oral proceedings and whether they requested the oral proceeding to take place by videoconference. Relying on this practice the flights had been booked one month in advance of the oral proceedings.
4. The board recognises that it is good practice that parties inform the boards in advance whether they will attend oral proceedings. The reason why this is regularly done one month in advance of the oral proceedings is because of a possible request for interpretation (Rule 4(1) EPC). There is however no obligation, neither in a legal provision nor recognised

by case law, for a party to inform the board no later than one month in advance.

5. As far as attendance is concerned, it is possible that due to non-attendance and/or withdrawal of a request for oral proceedings, these are no longer necessary. In these cases, if the other parties are informed so late that the information does not reach them before they start their journey to Munich, it may be equitable that their travel costs are reimbursed, see e.g. decisions T 937/04, T 258/13 and T 280/15. On the other hand, in decision T 105/14 the board considered that informing the parties three days in advance of the oral proceedings was not too late, and in decision T 2377/13 the board considered that the other party could still have cancelled travel arrangements two days in advance.
6. The board further notes that an appellant is also entitled to withdraw its appeal at any time. Based on the principle of free party disposition, this right may not be restricted, even implicitly by the threat of cost apportionment, on the grounds that oral proceedings have been scheduled and the opposing party cannot be notified in time (T 490/05).
7. With respect to a request to conduct the oral proceedings by videoconference, in view of the pandemic and following the introduction of Article 15a RPBA, parties should be aware that such request can be made at any time, also shortly before the date of oral proceedings, and even after parties have already travelled to Munich, e.g. if a party is confronted with a positive COVID test result on the date of oral proceedings and therefore prevented from entering the EPO premises.

8. It follows from the above considerations that parties should always bear in mind when making travel arrangements that oral proceedings scheduled to take place in person can be cancelled, adjourned or changed into a videoconference at short notice. Therefore, if a party for economical reasons decides to make travel arrangements for which no reimbursement is available if cancelled, they do so purely at their own risk.
9. Opponents 3 admitted at the oral proceedings that they were able to cancel their hotel reservations without having to pay a cancellation charge and that, had they travelled to Munich, the costs they would have incurred would have been higher. The reason why they requested the board to take a decision in their favour was therefore not in the first place about money, but the wish for the board to set a precedent discouraging a party from requesting a videoconference later than one month in advance of the oral proceedings, as they must take into account that it is normal practice for the other parties to book a non-refundable flight at this point in time.
10. The board, however, sees no reasons in view of the above considerations for recognising such practice and for setting such precedent.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside
2. The patent is revoked.
3. The request for apportionment of costs is rejected.

The Registrar:

The Chairman:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated