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**Datasheet for the decision
of 26 September 2022**

Case Number: T 0756/20 - 3.3.06

Application Number: 11743697.2

Publication Number: 2596093

IPC: C11D17/00, F26B3/12, C11D3/386,
C11D3/39, C11D3/395

Language of the proceedings: EN

Title of invention:

DELIVERY PARTICLES WITH A PLURALITY OF CORES

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Dalli-Werke GmbH & Co. KG
Danisco US Inc.
Henkel AG & Co. KGaA

Headword:

The Procter & Gamble/Delivery particles

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - revocation of the patent at request of the
patent proprietor

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0756/20 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 26 September 2022

Appellant: Dalli-Werke GmbH & Co. KG
(Opponent 1) Zweifaller Strasse 120
52224 Stolberg (DE)

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

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

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

Party as of right: Danisco US Inc.
(Opponent 2) 925 Page Mill Road
Palo Alto CA 94304-1013 (US)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Party as of right: Henkel AG & Co. KGaA
(Opponent 3) Henkelstrasse 57
40589 Düsseldorf (DE)

Representative: Viering, Jentschura & Partner mbB
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Hamborner Straße 53
40472 Düsseldorf (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 March 2020 concerning maintenance of the
European Patent No. 2596093 in amended form.

Composition of the Board:

Chairman J.-M. Schwaller
Members: S. Arrojo
J. Hoppe

Summary of Facts and Submissions

- I. Appeals were filed by the patent proprietor and by opponent 1 against the decision of the opposition division to maintain European patent No. 2 596 093 on the basis of the claims of auxiliary request 7 filed on 8 November 2019.
- II. In its statement of grounds of appeal, opponent 1 requested to revoke the patent in its entirety.
- III. In reply to the preliminary opinion of the board, the proprietor withdrew its appeal and the requests to maintain the patent as granted or on the basis of auxiliary requests 1 to 6.
- IV. At the oral proceedings, which took place on 26 September 2022, the patent proprietor withdrew the only pending request, namely auxiliary request 7, and stated that it did no longer approve the text of the patent in any form.
- V. The opponent 1 and appellant requested that the appealed decision be set aside and the patent be revoked in its entirety.

Reasons for the Decision

1. According to Article 113(2) EPC, the EPO shall decide on European patents only in the text submitted to it or agreed upon by the patent proprietor.
2. Since the patent proprietor withdrew the only pending request and expressly declared disapproval of any text for maintenance of the patent, there is no version of

the patent on which the board could base the assessment of the appeal.

3. In these circumstances, the proceedings must be terminated with a decision ordering the revocation of the patent without addressing the substantial arguments (Case Law of the Boards of Appeal, 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:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated