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**Datasheet for the decision  
of 11 July 2023**

**Case Number:** T 0260/21 - 3.3.09

**Application Number:** 12876904.9

**Publication Number:** 2852370

**IPC:** A61K8/73, A61K8/81, A61K8/39,  
A61K8/60, A61Q19/00, A61K8/37

**Language of the proceedings:** EN

**Title of invention:**  
RADIANCE COMPOSITIONS AND METHODS OF USE

**Patent Proprietor:**  
Johnson & Johnson Consumer Inc.

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

**Headword:**  
Radiance Composition/HENKEL

**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Basis of decision - text or agreement to text withdrawn by  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:**



**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 0260/21 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 11 July 2023**

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

**Representative:** LKGLOBAL  
Lorenz & Kopf Patentanwalt  
Attorney at Law PartG mbB  
Brienner Straße 11  
80333 München (DE)

**Respondent:** Johnson & Johnson Consumer Inc.  
(Patent Proprietor) 199 Grandview Road  
Skillman, NJ 08558 (US)

**Representative:** Carpmaels & Ransford LLP  
One Southampton Row  
London WC1B 5HA (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 29 January 2021  
rejecting the opposition filed against European  
patent No. 2852370 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** A. Haderlein  
**Members:** A. Veronese  
F. Blumer

## **Summary of Facts and Submissions**

- I. The appeal was filed by the opponent (appellant) against the opposition division's decision to reject the opposition filed against the European patent.
- II. With its letter dated 15 June 2023 the proprietor stated that it no longer approved of the text of the patent in any form. Furthermore, that no amended text will be submitted.
- III. The opponent requested that the decision under appeal be set aside and that the patent be revoked.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall consider 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 strictly observed also in opposition and opposition appeal proceedings. As the patent proprietor withdrew all claim requests and its agreement to the text of the patent in any form, there is no text of the patent on which the board can base its consideration of the opponent's appeal.
2. If the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted, and does not submit any amended text, the patent is to be revoked (Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, third paragraph and III.B.3.3, first

paragraph). The patent must therefore be revoked, without any preceding substantive examination.

## 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:



M. Schalow

A. Haderlein

Decision electronically authenticated