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**Datasheet for the decision  
of 30 April 2024**

**Case Number:** T 1249/21 - 3.3.08

**Application Number:** 11705751.3

**Publication Number:** 2534233

**IPC:** C11D3/33, C11D3/36, C11D3/386,  
C12N9/28

**Language of the proceedings:** EN

**Title of invention:**

Cleaning composition comprising amylase variants with high stability in the presence of a chelating agent

**Patent Proprietor:**

The Procter & Gamble Company

**Opponent:**

Danisco US Inc.

**Headword:**

Agreement to text withdrawn/PROCTER&GAMBLE COMPANY

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

**Decisions cited:**

T 0073/84, T 0186/84



**Beschwerdekammern**  
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Case Number: T 1249/21 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 30 April 2024**

**Appellant:** Danisco US Inc.  
(Opponent) 925 Page Mill Road  
Palo Alto CA 94304-1013 (US)

**Representative:** Mewburn Ellis LLP  
Aurora Building  
Counterslip  
Bristol BS1 6BX (GB)

**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)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 4 June 2021  
rejecting the opposition filed against European  
patent No. 2534233 pursuant to Article 101(2)  
EPC**

**Composition of the Board:**

**Chair** T. Sommerfeld  
**Members:** A. Schmitt  
A. Bacchin

## **Summary of Facts and Submissions**

- I. The appeal lodged by the opponent (appellant) lies from the decision of the opposition division to reject the opposition filed against European patent No. 2 534 233 (the patent).
- II. In the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. In reply to the appeal, the patent proprietor (respondent) requested that the appeal be dismissed, i.e. that the patent be maintained as granted, or, in the alternative, that the patent be maintained in amended form based on the set of claims of one of auxiliary requests 1 to 7 filed with the reply to the appeal.
- IV. The board issued a summons to oral proceedings, and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- V. In a submission dated 23 April 2024, the patent proprietor stated that they no longer approved the text of the patent as granted and that they withdrew all pending auxiliary requests and the request for oral proceedings.
- VI. The board cancelled the oral proceedings.

## **Reasons for the Decision**

1. Pursuant to the principle of party disposition established by Article 113(2) EPC, the EPO will examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the patent proprietor, as in the present case, expressly withdraws the consent to the text of the patent in the form as granted and withdraws all requests on file (see section V.).
3. There is therefore no text of the patent on the basis of which the board can consider the appeal. In these circumstances, as there is no approved text, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84 (OJ EPO 1985, 241) and T 186/84, (OJ EPO 1986, 79) and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.2).
4. Revocation of the patent is also the appellant's (opponent's) main request (see section II.). There are no remaining issues that need to be dealt with by the board in this appeal case, either. The decision in this appeal case can therefore be taken without holding oral proceedings.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated