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

Case Number: T 1275/21 - 3.3.06
Application Number: 12178998.6
Publication Number: 2520641
IPC: C11D3/06, C11D3/10, C11D3/37,
C11D3/39, C11D17/06
Language of the proceedings: EN

Title of invention:

Low phosphate automatic dishwashing detergent composition

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Dalli-Werke GmbH & Co. KG
Henkel AG & Co. KGaA

Headword:

Procter & Gamble/Dishwashing composition

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Basis of decision - text or agreement to text withdrawn by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 1275/21 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 11 January 2023

Appellant: Henkel AG & Co. KGaA
(Opponent 2) Henkelstrasse 67
40589 Düsseldorf (DE)

Representative: Henkel AG & Co. KGaA
CLI (Patente)
40191 Düsseldorf (DE)

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)

Party as of right: Dalli-Werke GmbH & Co. KG
(Opponent 1) Zweifaller Strasse 120
52224 Stolberg (DE)

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
16 June 2021 concerning maintenance of the
European Patent No. 2520641 in amended form.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: S. Arrojo
 R. Cramer

Summary of Facts and Submissions

- I. The appeal was filed by opponent 2 against the decision of the opposition division to maintain European patent No. 2 520 641 in amended form.
- II. In the grounds of appeal, the appellant requested that the contested decision be set aside and that the patent be revoked in its entirety.
- III. In the reply, the proprietor and respondent requested that the appeal be dismissed (main request) or, as an auxiliary measure, that the patent be maintained on the basis of the claims according to one of auxiliary requests 1 to 9 filed therewith.
- IV. In response to the board's preliminary opinion, the patent proprietor in a submission dated 9 January 2024 withdrew all its pending requests, including the request to hold oral proceedings, and stated that it did no longer approve the text of the patent in any form.

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 all its pending requests and expressly declared that it did not approve the text of the patent in any form, 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