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**Datasheet for the decision
of 16 May 2024**

Case Number: T 0257/22 - 3.3.06

Application Number: 16718970.3

Publication Number: 3286292

IPC: C11D3/40, C11D17/04

Language of the proceedings: EN

Title of invention:

DETERGENT COMPOSITIONS COMPRISING A SHADING DYE INCORPORATED
INTO A WATER-SOLUBLE FILM

Patent Proprietor:

The Procter & Gamble Company

Opponents:

UNILEVER N.V./UNILEVER PLC
Henkel AG & Co. KGaA

Headword:

Shading dye composition/P&G

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0257/22 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 16 May 2024

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

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

Appellant: UNILEVER N.V. / UNILEVER PLC
(Opponent 1) Weena 455/100 Victoria Embankment
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(NL)

Representative: Brooijmans, Rob Josephina Wilhelmus
Unilever Patent Group
Bronland 14
6708 WH Wageningen (NL)

Party as of right: Henkel AG & Co. KGaA
(Opponent 2) Henkelstrasse 67
40589 Düsseldorf (DE)

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 December 2021 concerning maintenance of the
European Patent No. 3286292 in amended form.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: R. Elsässer
 O. Loizou

Summary of Facts and Submissions

- I. The appeals of the patent proprietor and opponent I lie from the interlocutory decision of the opposition division to maintain European patent no. 3 286 292 in amended form, based on the claims of auxiliary request 3.
- II. With their respective grounds of appeal, opponent I requested that the patent be revoked in its entirety, and the patent proprietor requested that the patent be maintained as granted, or as an auxiliary measure, that the patent be maintained in amended form on the basis of the claims according to one of auxiliary requests 1-13 filed with the grounds of appeal.
- III. Opponent 2 and party as of right replied to the proprietor's appeal and requested to dismiss it.
- IV. In response to the Board's preliminary opinion which followed the summons to oral proceedings, the patent proprietor in a letter received on 1 May 2024 withdrew its appeal and all auxiliary requests then on file. Moreover it stated that it disapproved the text of the granted patent in any form and was not offering any alternative text.
- V. Thereafter, the board cancelled the oral proceedings.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the

patent.

2. In the present case, the proprietor expressly stated in writing that it no longer approved the text of the patent in any form. Hence, an agreement no longer exists for the text of the patent as granted and all auxiliary requests, including the request held allowable by the opposition division, were withdrawn.
3. There is thus no text of the patent on the basis of which the board can consider the appeal of opponent 1. In these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 10th edition July 2022, IV.D.2).
4. In view of the fact that revocation of the patent is also the main request of the sole remaining appellant (opponent I) and there is no remaining issue that need to be dealt with by the board, the decision is to be issued without holding oral proceedings.
5. Since the patent proprietor withdrew its appeal within one month of notification of the communication under Article 15(1) RPBA, 50% of the appeal fee are to be reimbursed, pursuant to Rule 103(3)(a) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked
3. The appeal fee of the patent proprietor is reimbursed at 50%.

The Registrar:

The Chairman:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated