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**Datasheet for the decision
of 22 May 2025**

Case Number: T 0052/23 - 3.3.06

Application Number: 16206277.2

Publication Number: 3339411

IPC: C11D3/00, C11D3/22, C11D3/382,
C11D3/50

Language of the proceedings: EN

Title of invention:
FABRIC SOFTENER COMPOSITION HAVING IMPROVED VISCOSITY STABILITY

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Henkel AG & Co. KGaA

Headword:
Procter & Gamble/Fabric softener

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Basis of decision - text or agreement to text withdrawn by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

Case Number: T 0052/23 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 22 May 2025

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

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

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

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 November 2022 concerning maintenance of the
European Patent No. 3339411 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 the opponent against the decision of the opposition division to maintain European patent No. 3 339 411 in amended form on the basis of the claims according to auxiliary request 2 filed during the oral proceedings on 1 November 2022.
- II. With a submission dated 17 March 2023, the proprietor withdrew its appeal and continued the proceedings as respondent.
- III. With its statement of grounds of appeal, the opponent (now the sole appellant) requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- IV. In the reply to the appeal, the respondent requested that the opponent's appeal be dismissed and the patent be maintained on the basis of the claims upheld by the opposition division (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 8 (auxiliary requests 5 to 8 corresponding to the auxiliary requests 3 to 6 filed during the first instance proceedings).
- V. At the oral proceedings, which took place on 22 May 2025, the patent proprietor withdrew all the pending requests and stated that it did no longer approve the text of the patent in any form. The appellant maintained its initial requests.

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:



B. Atienza Vivancos

J.-M. Schwaller

Decision electronically authenticated