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**Datasheet for the decision  
of 12 March 2024**

**Case Number:** T 1210/23 - 3.3.06

**Application Number:** 16178670.2

**Publication Number:** 3266860

**IPC:** C11D1/66, C11D17/04, C11D1/75,  
C11D3/37, C11D17/00, C11D11/00,  
C11D3/33, C11D3/20, C11D3/00,  
C11D3/386, C11D3/395, C11D3/50

**Language of the proceedings:** EN

**Title of invention:**  
PROCESS FOR MAKING A PARTICLE

**Patent Proprietor:**  
The Procter & Gamble Company

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

**Headword:**  
MAKING A PARTICLE/Procter & Gamble

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**

Basis of decision - agreement to text withdrawn by the patent proprietor

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1210/23 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 12 March 2024**

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

**Representative:** Henkel IP Department  
c/o Henkel AG & Co. KGaA  
Henkelstraße 67  
40589 Düsseldorf (DE)

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

**Representative:** P&G Patent Belgium UK  
Temselaan 100  
1853 Strombeek-Bever (BE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
24 April 2023 concerning maintenance of the  
European Patent No. 3266860 in amended form.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** P. Ammendola  
J. Hoppe

## **Summary of Facts and Submissions**

- I. The opponent's appeal lies from the interlocutory decision of the opposition division to maintain European patent no. 3 266 860 in amended form on the basis of the main request then on file.
- II. In its statement of grounds of appeal the appellant requested the revocation of the patent.
- III. The patent proprietor and respondent declared in a letter dated 7 March 2024 to "*withdraw all of our requests in the current appeal proceedings*" and "*also hereby withdraw approval of the text of the above Patent in any form*".

## **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, such an agreement no longer exist for the text of the patent as maintained or any of the auxiliary requests on file.
3. There is thus no text of the patent on the basis of which the board can consider the appeal.

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).

## 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