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D E C I S I O N
of 17 November 2004

Case Number: T 0066/98 - 3.3.6

Application Number: 91301509.5

Publication Number: 0444858

IPC: C11D 1/68

Language of the proceedings: EN

Title of invention:
Detergent composition

Patentee:
UNILEVER PLC, et al

Opponents:
The Procter & Gamble Company
Henkel Kommanditgesellschaft auf Aktien

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Patentee's agreement of the text (no) - revocation"

Decisions cited:
T 0073/84, T 0601/98, T 0836/97

Catchword:
-



Case Number: T 0066/98 - 3.3.6

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 17 November 2004

Appellant: Henkel
(Opponent II) Kommanditgesellschaft auf Aktien
TFP/Patentabteilung
D-40191 Düsseldorf (DE)

Representative: -

Respondents: UNILEVER OLC
(Proprietors of the Unilever House
patent) Blackfriars
London EC4P 4BQ (GB)

UNILEVER N.V.
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Representative: Ford, Michael Frederick
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York House
23 Kingsway
London WC2B 6HP (GB)

Party as of right: The Procter & Gamble Company
(Opponent I) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

Representative: Lawrence, Peter Robin Broughton
GILL JENNINGS & EVERY
Broadgate House
7 Eldon Street
London EC2M 7LH (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 18 November 1997
rejecting the opposition filed against European
patent No. 0444858 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Krasa
Members: L. LiVoti
M. B. Tardo-Dino

Summary of Facts and Submissions

- I. The appeal is from a decision of the opposition division rejecting the oppositions which had been filed against the patent No. 04 440 858.
- II. Opponent II filed an appeal against this decision on 13 January 1998 requesting that the decision be set aside and the patent be revoked. He paid the appeal fee at the same date. He filed the statement of the grounds of appeal on 27 March 1998.
- III. Oral proceedings were scheduled on 20 September 2004. With a letter dated 13 July 2004, the representative of the patent proprietors informed the Board that they no longer agree with the text of the patent as granted and they did not intend to file an amended version, and that accordingly they understood that the patent would be revoked.

Reasons for the Decision

1. The appeal is admissible as complying with the requirements of Articles 106 to 108 and Rule 64 EPC.
2. In accordance with Article 113(2) EPC, the EPO can consider and decide upon the patent only in the text agreed by the proprietor of the patent. Such an agreement cannot be held to be given if the proprietor expressly no longer approves the text of the patent as granted and does not submit an amended text, accepting that the patent will be revoked as a necessary consequence of this non-approval.

In such circumstances, a substantive requirement for maintaining the patent is lacking. Although there is no specific provision allowing the proprietor of the European patent to surrender his rights to this European Patent, Article 113 EPC provides a legal basis for the Office to draw the legal consequence from this situation which otherwise could be a source of legal uncertainty concerning industrial property rights. It is established case-law that in these circumstances, since a requirement *sine qua non* to maintain the patent is lacking, the revocation of the patent is to be ordered without consideration of any further issues (see for examples: T 601/98 and T 836/97 both not published in the OJ EPO); T 73/84 OJ EPO 1985,241).

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:

G. Rauh

P. Krasa