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D E C I S I O N
of 29 April 2005

Case Number: T 0401/99 - 3.3.7

Application Number: 92923542.2

Publication Number: 0610407

IPC: A61K 7/06

Language of the proceedings: EN

Title of invention:

Shampoo compositions with silicone, cationic polymer, and oily liquid conditioning agents

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Henkel Kommanditgesellschaft auf Aktien
KPSS-Kao Professional Salon Services GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Missing approval of the text of the patent - revocation"

Decisions cited:

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Catchword:

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Case Number: T 0401/99 - 3.3.7

D E C I S I O N
of the Technical Board of Appeal 3.3.7
of 29 April 2005

Appellant: Henkel
(Opponent 01) Kommanditgesellschaft auf Aktien
TFP / Patentabteilung
D-40191 Düsseldorf (DE)

Representative: -

Respondent: THE PROCTER & GAMBLE COMPANY
(Proprietor of the patent) One Procter & Gamble Plaza
Cincinnati
Ohio 45202 (US)

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

Party as of right: KPSS-Kao Professional Salon Services GmbH
(Opponent 02) Pfungstädterstrasse 92-100
D-64297 Darmstadt (DE)

Representative: -

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 22 March 1999
rejecting the opposition filed against European
patent No. 0610407 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: R. E. Teschemacher
Members: B. J. M. Struif
P. A. Gryczka

Summary of Facts and Submissions

- I. The appeal contests the decision of the Opposition Division of the European Patent Office posted on 22 March 1999 rejecting the oppositions filed against European patent No. 0 610 407.
- II. On 17 April 1999 the opponent 01 (appellant) lodged an appeal against the decision and paid the corresponding fee on the same day. A statement of grounds was filed on 23 June 1999.
- III. In reply to the summons to oral proceedings and the communication of the Board of 21 April 2005, the respondent's (proprietor's) representative stated by letter dated 22 April 2005, that the proprietor had no further interest in the proceedings and accordingly no longer approved of the text of the granted patent.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. In accordance with Article 113(2) EPC, the EPO can maintain the patent only in the text agreed by the proprietor of the patent. Agreement cannot be held to be given if the proprietor, without submitting an amended text, expressly states that he no longer approves of the text of the patent as granted or previously amended. In such a situation a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision

ordering revocation, without going into the substantive issues (Case Law of the Boards of Appeal, 4th edition 2001, VII.D.11.3, page 540 of the English version).

Order

For these reasons it is decided that:

1. The decision of the Opposition Division dated 22 March 1999 is set aside.
2. European patent No. 0 610 407 is revoked.

The Registrar:

The Chairman:

C. Eickhoff

R. Teschemacher