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**D E C I S I O N**  
**of 24 October 2000**

**Case Number:** T 0543/99 - 3.3.6

**Application Number:** 92914376.6

**Publication Number:** 0583420

**IPC:** C11D 3/386

**Language of the proceedings:** EN

**Title of invention:**

Built liquid detergents with boric-polyol complex to inhibit proteolytic enzyme

**Patentee:**

THE PROCTOR & GAMBLE COMPANY

**Opponent:**

Unilever PLC / Unilever NV

**Headword:**

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**Relevant legal provisions:**

EPC Art. 99(1), 102(2), 107, 108

EPC R. 65(1), 67, 78(2), 100(1)

**Keyword:**

"Related companies filing opposition or appeal must each pay opposition or appeal fee"

"Failure to file statements of grounds amounts to withdrawal of appeal"

"Reimbursement of appeal fee (no)"

**Decisions cited:**

T 0013/82, T 0089/84, T 0324/90, T 0272/95

**Catchword:**

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Case Number: T 0543/99 - 3.3.6

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.6**  
**of 24 October 2000**

**Appellant:**  
(Opponent)

Unilever PLC  
Unilever House  
Blackfriars  
London EC4 4BQ (GB)

Unilever N.V.  
Weena 455  
NL-3013 Al Rotterdam (NL)

**Representative:**

Waldren, Robin Michael  
MARKS & CLERK  
57-60 Lincoln's Inn Fields  
London WC2A 3LS (GB)

**Respondent:**  
(Proprietor of the patent)

THE PROCTER & GAMBLE COMPANY  
One Procter & Gamble Plaza  
Cincinnati  
Ohio 45202 (US)

**Representative:**

TER MEER STEINMEISTER & PARTNER GbR  
Mauerkircherstrasse 45  
D-81679 München (DE)

**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. 0 583 420 pursuant to Article 102(2)  
EPC.**

**Composition of the Board:**

**Chairman:** P. Krasa  
**Members:** C. Rennie-Smith  
G. N. C. Raths

## **Summary of Facts and Submissions**

- I. Notice of opposition was filed on 23 December 1996, in the names of two related companies with a joint representative, to European patent No. 92 914 376.6. Only one opposition fee was paid. By its decision, posted on 22 March 1999, the Opposition Division of the European Patent Office rejected the opposition pursuant to Article 102(2) EPC.
- II. A notice of appeal against that decision was filed on 20 May 1999 naming both companies as appellants. The appeal fee was paid on 21 May 1999. A statement of the grounds of appeal should have been filed by 1 August 1999 at the latest (see Article 108 and Rule 78(2) EPC).
- II. In a letter from their representative of 21 July 1999 the appellants said that grounds of appeal would not be submitted and requested that the appeal be treated as not having been filed and that the appeal fee be refunded. No statement of grounds was filed, either by 1 August 1999 or at all.

## **Reasons for the Decision**

### *1. Admissibility*

- 1.1 In this case there were two purported opponents, Unilever plc and Unilever NV. Unilever plc was named as an opponent on page 1 of Form 2300.1 which was used as the formal notice of opposition. On that form the box against the words "Multiple opponents" was checked with a cross and, as the form directed, Unilever NV was

named on an additional sheet, provided by the representative and headed "Further opponent". However, only one opposition fee was paid. Since Article 99(1) EPC states a notice of opposition "shall not be deemed to have been filed until the opposition fee has been paid", it follows that the opposition of one of the two named companies must be deemed never to have been filed. Being the first named, it is appropriate to treat Unilever plc as the only opponent, an approach supported by Rule 100(1) EPC which provides (first sentence) that, in the absence of a common representative of two or more applicants for a European patent, the first named is treated as the common representative and (third sentence) that "The same shall apply *mutatis mutandis* to third parties acting in common in filing notice of opposition...".

1.2 It follows that, in view of the explicitly clear terms of Article 99(1) EPC, the opposition of the second named opponent Unilever NV was inadmissible *ab initio* and, not having been a proper party to the opposition proceedings, that company could not be adversely affected by the decision of the opposition division and could not therefore appeal (Article 107 EPC). Thus, so far as it concerns the second opponent, the present appeal is for that reason inadmissible.

1.3 In the present case it would appear that, apart from the non-payment of a fee, nothing has turned on this point since the two companies are related, were jointly represented, have no doubt adopted a wholly common approach to the opposition throughout and since the subsequent appeal has now been effectively withdrawn (see point 2 below). However, any such identity of interest does not and cannot alter the legal

requirement that each opponent must pay an opposition fee for its opposition to be admissible. A corporate relationship does not entitle a party to a "free ride". The failure by one of two or more members of the same group of companies who all elect to oppose a European patent to pay the opposition fee would mean that no right of opposition could be retained by a company leaving the group or acquired by a third party on purchase of the business of the non-paying company.

1.4 The Board is aware that Board 3.3.4 has referred to the Enlarged Board of Appeal the question

"Is an opposition admissible which otherwise meets the requirements of Article 99 and Rule 55 EPC if it is jointly filed by two or more persons and only one opposition fee is paid?"

and that this question, with others, is pending before the Enlarged Board (see T 272/95, OJ 1999, 590). However, that question relates to circumstances quite different from those of the present case, namely an opposition (or purported opposition) brought by a group, not in itself having a legal personality, of 26 natural persons of different nationalities paying only one opposition fee. Further, even if the decision in that case of the Enlarged Board were to have any effect on cases such as the present, the outcome of the present case would remain the same for the reasons in paragraphs 1.5 to 2.2 below. In these circumstances the Board did not deem it necessary and appropriate to wait for the Enlarged Board's of Appeal decision on the above quoted question before rendering the present decision.

1.5 Regarding the first named opponent Unilever plc (being the only party entitled to appeal), as no written statement setting out the grounds of appeal has been filed, and neither the notice of appeal nor the representative's letter of 21 July 1999 contains anything that could be regarded as a statement of grounds of appeal pursuant to Article 108 EPC, the appeal has to be rejected as inadmissible (Article 108 EPC and Rule 65(1) EPC).

2. *Reimbursement of appeal fee*

2.1 An appeal fee may only be reimbursed in one of the two events specified in Rule 67 EPC, namely interlocutory revision or where the Board of Appeal deems an appeal to be allowable if reimbursement is equitable by reason of a substantial procedural violation. The present case, in which the appellant effectively withdrew its appeal, could not fall more clearly outside the provisions of Rule 67 EPC. It has been held in earlier decisions of the Boards (see T 13/82, OJ 1983, 411, and T 324/90, OJ 1993, 33) that an appeal fee cannot be refunded because a statement of grounds was not filed, or was filed too late, or (as appears to be the case here) was deliberately not filed in order to make the appeal inadmissible (see T 89/84, OJ 1984, 562).

2.2 It would be manifestly inequitable to reward, by reimbursing the appeal fee, a party which launches an appeal and then of its own volition terminates it. By filing the appeal, the appellant put the respondent and the Board to trouble and cost which in the event were wasted when the appellant withdrew its appeal. Seeking, as the appellant does, to dignify this withdrawal with the term "treating the appeal as not having been filed"

does not and cannot alter the fact that the appeal was filed and has subsequently been withdrawn. Therefore, the request for reimbursement must be refused.

**Order**

**For these reasons it is decided that:**

1. The appeal is rejected as inadmissible.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

G. Rauh

P. Krasa