Datasheet for the decision
of 28 October 2011

Case Number: T 1325/08 - 3.4.03
Application Number: 00987374.6
Publication Number: 1250693
IPC: G09F 3/02, B65D 23/08
Language of the proceedings: EN

Title of invention:
Indicia for containers

Patent Proprietors:
Unilever PLC
Unilever N.V.

Opponent:
The Procter & Gamble Company

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

Relevant legal provisions (EPC 1973):
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Keyword:
"No text agreed by the proprietor - revocation of the patent"

Decisions cited:
T 0073/84, T 0186/84, T 0157/85, T 1655/07

Catchword:
-
Case Number: T 1325/08 - 3.4.03

DEcision of the Technical Board of Appeal 3.4.03
of 28 October 2011

Appellant: The Procter & Gamble Company
(Opponent)
One Procter & Gamble Plaza
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Representative: Schneider, Stefan Michael
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Respondents: Unilever PLC
(Patent Proprietors)
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Representative: Baker, Colin John
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Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 6 May 2008 rejecting the opposition filed against European patent No. 1250693 pursuant to Article 101(2) EPC.

Composition of the Board:
Chairman: G. Eliasson
Members: R. Q. Bekkering
T. Bokor
Summary of Facts and Submissions

I. This decision concerns the appeal by opponent I (The Procter & Gamble Company) against the decision of the opposition division (posted 6 May 2008) rejecting the opposition against the European patent No. 1250693.

II. On 2 July 2008, the appellant (opponent I) filed a notice of appeal against the above decision and paid the prescribed fee on the same day. A statement setting out the grounds of appeal was filed on 5 September 2008. The appellant requested that the decision under appeal be reversed and that the patent be revoked in its entirety.

III. With letter of 16 January 2009, the respondent (proprietor) filed a response to the appeal, requesting dismissal of the appeal and oral proceedings.

IV. By letter of 10 October 2011, the respondent stated the following:

"The proprietor no longer approves the text in which the patent was granted, and will not submit an amended text."

V. By letter of 17 October 2011, the respondent withdrew its request for oral proceedings.
Reasons for the Decision

1. The appeal is admissible.

2. Article 113(2) EPC requires that the EPO shall decide upon the European patent only in the text submitted to it, or 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 the text of the patent as granted or previously amended.

In such 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 (see eg decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 157/85 of 12 May 1986, not published in OJ EPO; and T 1655/07 of 10 June 2009, equally not published in OJ EPO).
Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar

S. Sánchez Chiquero

The Chairman

G. Eliasson