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Datasheet for the decision
of 20 November 2013

Case Number: T 2622/11 - 3.3.06
Application Number: 02786582.3
Publication Number: 1446472
IPC: C11D17/00, C11D17/04
Language of the proceedings: EN
Title of invention:
Detergent system

Patent Proprietor:
The Procter & Gamble Company

Opponents:
Henkel AG & Co. KGaA
Unilever N.V.

Headword:
Detergent system/PROCTER & GAMBLE

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - revocation of the patent at request of the patent proprietor

Decisions cited:
T 0186/84
Catchword:
Case Number: T 2622/11 - 3.3.06

DECISION
of Technical Board of Appeal 3.3.06
of 20 November 2013

Appellant I: THE PROCTER & GAMBLE COMPANY
(Patent Proprietor)
One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative: Samuels, Lucy Alice
Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London
EC2A 2ES (GB)

Appellant II: Henkel AG & Co. KGaA
(Opponent 1)
VTP Patente
40191 Düsseldorf (DE)

Appellant III: Unilever N.V.
(Opponent 2)
Weena 455
3013 AL Rotterdam (NL)

Representative: Kan, Jacob Hendrik
Unilever N.V.
Patent Group
Olivier van Noortlaan 120
3133 AR Vlaardingen (NL)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 November 2011 concerning maintenance of the
Composition of the Board:

Chairman: B. Czech
Members: L. Li Voti
         U. Lokys
Summary of Facts and Submissions

I. The three appeals by the Patent Proprietor (Appellant I) and the two Opponents (Appellants II and III) are from the interlocutory decision of the Opposition Division concerning maintenance of European patent no. 1 446 472 in amended form.

II. In its letter dated 16 October 2013 Appellant I stated that "the entire bundle of national patents derived from this case has been abandoned through non-payment of maintenance fees. The Proprietor is content that the appeal does not proceed."

III. In the communication pursuant to Rule 100(2) EPC dated 5 November 2013 the Board indicated inter alia that "The Proprietor's statement ... could also be understood to mean that the Proprietor is no longer interested at all in the patent in suit. For the sake of procedural efficiency, the Proprietor thus is invited to indicate as soon as possible and within the time limit set by the present communication, whether it requests the revocation of the patent in suit (in this respect see Case Law of the Boards of Appeal of the EPO, 7th edition, 2013, IV.C.5.2, pages 847 and 848)."

IV. Appellant I stated in its letter of 19 November 2013 that "With reference to the communication dated 5 November 2013, the Proprietor requests revocation of this Patent."
Reasons for the Decision

1. The appeals are admissible.

2. The request of Appellant I for revocation of its patent implies that the Patent Proprietor withdraws its agreement to the text in which the patent was maintained in amended form by the Opposition Division and that it does not intend to submit any other text for the maintenance of the patent.

3. Article 113(2) EPC, however, stipulates that the EPO may decide upon a European patent only in the text submitted to it or agreed to by the Patent Proprietor. This substantive requirement for maintaining the contested patent is not fulfilled in the present case.

4. Accordingly, it is the established case law of the Boards of Appeal that if the Patent Proprietor itself requests, as in the present case, that the patent be revoked, the patent is to be revoked without a substantive examination of the alleged impediments to patentability (see T 186/84, OJ EPO 1986, 79, point 5 of the reasons).
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:

D. Magliano B. Czech

Decision electronically authenticated