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**D E C I S I O N**  
**of 27 March 2003**

**Case Number:** T 0507/00 - 3.3.1

**Application Number:** 92912218.2

**Publication Number:** 0586522

**IPC:** C07D 307/20

**Language of the proceedings:** EN

**Title of invention:**

Process for the production of mixtures of  
2-hydroxytetrahydrofuran and 4-hydroxybutanal

**Patentee:**

EASTMAN CHEMICAL COMPANY

**Opponent:**

BASF Aktiengesellschaft, Ludwigshafen

**Headword:**

Mixtures/EASTMAN

**Relevant legal provisions:**

EPC Art. 102(3a), 113(2)

**Keyword:**

"Revocation of the European patent - No text of patent any  
longer approved"

**Decisions cited:**

T 0073/84

**Catchword:**

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Case Number: T 0507/00 - 3.3.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.1**  
**of 27 March 2003**

**Appellant:** BASF Aktiengesellschaft, Ludwigshafen  
(Opponent) -Patentabteilung - C6-  
Carl-Bosch-Strasse 38  
D-67056 Ludwigshafen (DE)

**Representative:** Riedl, Peter, Dr.  
Patentanwälte  
Reitstötter, Kinzebach & Partner  
Postfach 86 06 49  
D-81633 München (DE)

**Respondent:** EASTMAN CHEMICAL COMPANY  
(Proprietor of the patent) 100 North Eastman Road  
Kingsport  
TN 37660 (US)

**Representative:** Behrens, Dieter, Dr.-Ing.  
Wuesthoff & Wuesthoff  
Patent- und Rechtsanwälte  
Schweigerstrasse 2  
D-81541 München (DE)

**Decision under appeal:** Interlocutory decision of the Opposition Division  
of the European Patent Office posted 13 March  
2000 concerning maintenance of European patent  
No. 0 586 522 in amended form.

**Composition of the Board:**

**Chairman:** A. J. Nuss  
**Members:** P. F. Ranguis  
S. C. Perryman

## **Summary of Facts and Submissions**

- I. In its decision dated 13 March 2000, the Opposition Division maintained the European patent No. 0 586 522 in amended form.
  
- II. The Appellant (Opponent) appealed against the decision of the Opposition Division on 19 May 2000, requesting that the patent be revoked. The appeal fee was paid on 19 May 2000 and the statement of grounds filed on 21 July 2000.
  
- III. The Respondent (Proprietor of the patent) originally requested that the appeal be dismissed, but by letter of 21 March 2003 his representative indicated that the patentee "withdraws his approval of the text specified in the communication under Rule 51(4) EPC with letter of October 29, 1996". By letter dated 25 March 2003 this was clarified as indicating that the patentee was "in agreement with neither the text of the patent as granted nor the claims and description which the Opposition Division decided to meet the requirements of the European Patent Convention". No other text was suggested as meeting the approval of the Respondent.

## **Reasons for the Decision**

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
  
2. The Respondent made it clear through his representative that he no longer approves of the text in which the patent was maintained by the Opposition Division, or any other text.

3. Article 113(2) EPC states that the EPO confine its considerations in proceedings to the text of the European patent "submitted to it, or agreed " by the proprietor. If a patentee indicates that he does not agree with the text maintained by the Opposition Division, without indicating any other text he agrees with, the patent must be revoked as there is no longer any text whose compliance with the requirements of the EPC the Board of Appeal could consider (cf. 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 European patent No. 0 586 522 is revoked.

The Registrar:

The Chairman:

N. Maslin

A. Nuss