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**Datasheet for the decision
of 17 October 2006**

Case Number: T 0013/01 - 3.3.07

Application Number: 94915848.9

Publication Number: 0696937

IPC: B01J 33/00

Language of the proceedings: EN

Title of invention:

A method of treating spontaneously combustible catalysts

Patentee:

CRI INTERNATIONAL, INC.

Opponent:

Akzo Nobel N.V.

Headword:

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Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Agreement to text of the patent withdrawn - revocation"

Decisions cited:

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Catchword:

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Case Number: T 0013/01 - 3.3.07

DECISION
of the Technical Board of Appeal 3.3.07
of 17 October 2006

Appellant: Akzo Nobel N.V.
(Opponent) Velperweg 76
NL-6824 BM Arnhem (NL)

Representative: Hartmann, Günter
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Respondent: CRI INTERNATIONAL, INC.
(Patent Proprietor) Suite 1020
2 Greenspoint Plaza
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Representative: Cresswell, Thomas Anthony
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
7 November 2000 concerning maintenance of
European patent No. 0696937 in amended form.

Composition of the Board:

Chairman: S. Perryman
Members: F. Rousseau
G. Santavicca

Summary of Facts and Submissions

- I. In an interlocutory decision posted on 7 November 2000 the Opposition Division found that the European patent No. 0 696 937 in the form as amended in opposition proceedings satisfied the requirements of the EPC.
- II. On 5 January 2001 the opponent (appellant) lodged an appeal against the decision and paid the corresponding fee on the same day. A statement setting out the grounds of appeal was filed on 16 March 2001.
- III. In reply to the summons to oral proceedings and the communication of the Board of 27 July 2006, the respondent's (proprietor's) representative stated by telefax dated 2 October 2006, that the proprietor disapproved the text of the granted patent and as subsequently upheld by the decision of first instance dated 7 November 2000. He also stated in the same telefax that the main and auxiliary requests currently on the file were withdrawn. An amended text was not submitted.

Reasons for the Decision

1. The appeal is 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 the text of the patent as granted or subsequently 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 7 November 2000 is set aside.
2. European patent No. 0 696 937 is revoked.

The Registrar:

The Chairman:

C. Eickhoff

S. Perryman