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D E C I S I O N
of 10 February 2006

Case Number: T 0375/01 - 3.3.07

Application Number: 92310895.5

Publication Number: 0546741

IPC: B32B 27/32

Language of the proceedings: EN

Title of invention:
Polymeric films

Patentee:
Treofan Germany GmbH & Co. KG

Opponent:
Mobil Oil Corporation

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
-

Decisions cited:
-

Catchword:
-



Case Number: T 0375/01 - 3.3.07

D E C I S I O N
of the Technical Board of Appeal 3.3.07
of 10 February 2006

Appellant:
(Opponent)

Mobil Oil Corporation
3225 Gallows Road
Fairfax
Virginia 22037 (US)

Representative:

Dew, Melvyn John
ExxonMobil Chemical Europe Inc.
Intellectual Property Law Shared Services
P.O. Box 105
B-1830 Machelen (BE)

Respondent:
(Proprietor of the patent)

Treofan Germany GmbH & Co. KG
Bergstrasse
D-66539 Neunkirchen (DE)

Representative:

Luderschmidt, Schüler & Partner GbR
Patentanwälte
John-F.-Kennedy-Strasse 4
D-65189 Wiesbaden (DE)

Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 5 February 2001
rejecting the opposition filed against European
patent No. 0546741 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: S. Perryman
Members: G. Santavicca
B. ter Laan

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Opposition Division of the European Patent Office posted on 5 February 2001 rejecting the opposition filed against European patent No. 0 546 741.

- II. On 29 March 2001 the opponent (appellant) lodged an appeal against the decision and paid the prescribed fee on the same day. A statement of grounds was filed on 8 June 2001.

- III. In reply to the summons to oral proceedings and the communication of the Board of 12 January 2006, the respondent's (proprietor's) representative stated by letter dated 25 January 2006, that the proprietor no longer approved the text in which the patent was granted.

Reasons for the Decision

1. The appeal is admissible.

2. In accordance with Article 113(2) EPC, the EPO can maintain a patent only on the basis of a text agreed by the proprietor of the patent. No text can be considered agreed where the proprietor, without submitting an amended text, expressly states that he no longer approves of the text of the patent as granted or previously 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 5 February 2001 is set aside.
2. European patent No. 0 546 741 is revoked.

The Registrar:

The Chairman:

C. Eickhoff

S. Perryman