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D E C I S I O N
of 20 January 2004

Case Number: T 0534/01 - 3.3.3

Application Number: 94919871.7

Publication Number: 0658599

IPC: C08L 59/00

Language of the proceedings: EN

Title of invention:
Polyacetal resin composition

Patentee:
POLYPLASTICS CO. LTD.

Opponent:
Asahi Kasei Kogyo Kabushiki Kaisha

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Basis of decision - no longer approval of the text of the patent"

Decisions cited:
T 0073/84

Catchword:
-



Case Number: T 0534/01 - 3.3.3

D E C I S I O N
of the Technical Board of Appeal 3.3.3
of 20 January 2004

Appellant: Asahi Kasei Kogyo Kabushiki Kaisha
(Opponent) 2-6, Dojima-hama, 1-chome
Kita-ku Osaka-shi
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Representative: Koepe, Gerd L. Dipl.-Chem.
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Respondent: POLYPLASTICS CO. LTD.
(Proprietor of the patent) 3-13, Azuchicho, 2-chome
Chuo-Ku
Osaka-shi
Osaka 541 (JP)

Representative: Jackson, Peter
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office dated
30 January 2001 and posted on 13 March 2001
concerning maintenance of European patent
No. 0658599 in amended form.

Composition of the Board:

Chairman: R. Young
Members: C. Idez
R. Moufang

Summary of Facts and Submissions

- I. By an interlocutory decision announced orally on 30 January 2001 and issued in writing on 13 March 2001 the Opposition Division maintained the European patent No. 0 658 599 in amended form.
- II. The Appellant (Opponent) lodged an appeal against this decision on 25 April 2001 with simultaneous payment of the prescribed fee. It filed on 11 July 2001 a written statement setting out the grounds of appeal and requesting the revocation of the patent.
- III. With its letter dated 4 September 2003, the Respondent (Patent Proprietor) informed the Board that it no longer intended to defend the patent against the appeal and that it requested termination of the proceedings.
- IV. Following a communication from the Board issued on 27 October 2003, the Respondent indicated in its letter dated 22 December 2003 that it withdrew its approval to the text on which the patent had been maintained and that it declined to submit an alternative text.

Reasons for the Decision

1. The appeal is admissible.
2. Article 113(2) EPC states that the EPO confines its considerations in proceedings to the text of the European patent "submitted to it, or agreed" by the Patent Proprietor.

3. In the present case, as indicated in Section IV above, the Patent Proprietor made it clear that it no longer approved the text in which the patent was maintained by the Opposition Division and that it declined to submit an alternative text.

4. It thus follows that there is no longer any text the compliance of which with the requirements of the EPC the Board of Appeal could consider and that, therefore, the patent must be revoked (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. 0 658 599 is revoked.

The Registrar:

The Chairman:

E. Görgmaier

R. Young