

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [] To Chairmen
(D) [X] No distribution

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

Case Number: T 0897/02 - 3.3.7

Application Number: 90302275.4

Publication Number: 0444339

IPC: B32B 27/18

Language of the proceedings: EN

Title of invention:

Multi-layer heat-sealable polypropylene films

Patentee:

EXXONMOBIL OIL CORPORATION

Opponent:

Trespaphan GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 102, 113(2)

EPC R. 67

Keyword:

"Basis of decisions - patentee (no agreement of the text of the patent)"

"Substantial procedural violation (no)"

"Reimbursement of the appeal fee (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0897/02 - 3.3.7

D E C I S I O N
of the Technical Board of Appeal 3.3.7
of 27 March 2003

Appellant: Trespaphan GmbH
(Opponent) Bergstrasse
D-66539 Neunkirchen (DE)

Representative: Luderschmidt, Schüler & Partner GbR
Patentanwälte
Postfach 3929
D-65029 Wiesbaden (DE)

Respondent: EXXONMOBIL OIL CORPORATION
(Proprietor of the patent) 150 East 42nd Street
New York, NY 10017 (US)

Representative: Lawrence, Peter Robin Broughton
GILL JENNINGS & EVERY
Broadgate House
7 Eldon Street
London EC2M 7LH (GB)

Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 24 June 2002
concerning maintenance of European patent
No. 0 444 339 in amended form.

Composition of the Board:

Chairman: R. E. Teschemacher
Members: P. A. Gryczka
G. Santavicca

Summary of Facts and Submissions

- I. In its interlocutory decision posted on 24 June 2002 the Opposition Division of the European Patent Office found that European patent No. 0 444 339 could be maintained in amended form.
- II. On 3 September 2002, the opponent (appellant) lodged an appeal against that decision and paid the corresponding fee on the same day. A statement of grounds of appeal was filed on 4 November 2002.

The appellant argued *inter alia* that according to Article 102(3) EPC, the Opposition Division had to examine whether the parts of the claims which were amended during the opposition proceedings fulfilled the requirements of the EPC. The Opposition Division had failed however to examine the amendments under Articles 84 and 123(2) and (3) EPC. This constituted a substantial procedural violation. The reimbursement of the appeal fee was therefore requested.

- III. In a letter dated 18 February 2003, the respondent's (proprietor's) representative stated that the proprietor no longer approved the original or amended text in which the patent was granted and therefore had decided to abandon the patent.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore 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 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).

3. Paragraph 13 of the appealed decision deals with the support of the amended claims, whereas paragraph 14 shows that the Opposition Division has considered the clarity objection made by the appellant (letter dated 27 October 2000) in connection with the amendments made to the granted claims.

Therefore, contrary to the assertion of the appellant in the grounds for appeal filed on 4 November 2002, the Opposition Division did not fail to examine whether the claims as amended fulfilled the requirements of Article 123 and 84 EPC. In the framework of the refund of the appeal fee it is not to be examined whether or not the objected conclusions drawn by the Opposition Division were correct. In any case, it is not apparent to the Board that the assessment by the Opposition Division violated the procedural rights of the appellant. In the opinion of the Board the alleged substantial procedural violation has thus not been established. Therefore, the reimbursement of the appeal fee cannot be ordered (Rule 67 EPC).

Order

For these reasons it is decided that:

1. The decision of the Opposition Division dated 24 June 2002 is set aside.
2. European patent No.0 444 339 is revoked.

The Registrar:

The Chairman:

C. Eickhoff

R. E. Teschemacher