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**Datasheet for the decision
of 9 November 2006**

Case Number: T 0703/03 - 3.3.01

Application Number: 95114557.2

Publication Number: 0688855

IPC: C10M 105/38

Language of the proceedings: EN

Title of invention:

Refrigerating apparatus and refrigerant compressor

Patentee:

Hitachi, Ltd.

Opponents:

- (01) The Lubrizol Corporation
(02) Cognis Deutschland GmbH & Co. KG
(03) Nippon Mitsubishi Oil Corporation
(04) Mitsubishi Electric Corp.

Headword:

Refrigerating apparatus/HITACHI

Relevant legal provisions:

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

Keyword:

"Appeal against the revocation of the patent - admissible"
"Proprietor "no longer approves the text in which the patent
was granted" - appeal dismissed"

Decisions cited:

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Catchword:

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Case Number: T 0703/03 - 3.3.01

DECISION
of the Technical Board of Appeal 3.3.01
of 9 November 2006

Appellant:

(Patent Proprietor)

Hitachi, Ltd.
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Tokyo 101 (JP)

Representative:

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Patent- und Rechtsanwälte
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Respondents:

(Opponent 01)

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(Opponent 02)

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Representative:

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(Opponent 03)

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Representative:

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(Opponent 04)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 4 April 2003
revoking European patent No. 0688855 pursuant
to Article 102(1) EPC.**

Composition of the Board:

Chairman: A. J. Nuss
Members: P. Ranguis
D. Rogers
C. M. Radke
R. Menapace

Summary of Facts and Submissions

- I. In its decision posted on 4 April 2003, the Opposition Division revoked European patent No.: 0 688 855.
- II. On 13 June 2003, the Appellant (Proprietor of the patent) lodged an appeal against that decision and paid the corresponding fee on the same day. A statement of grounds of appeal was filed on 14 August 2003.
- III. In a letter dated 31 July 2006, the Appellant's representative stated that the proprietor no longer approved the text of the granted patent, that the requests filed so far were withdrawn, that no amended text would be submitted, and that, therefore, revocation of the patent was expected.

Reasons for the Decision

1. The appeal complies with Article 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, indicating that no amended text will be submitted, expressly states that he no longer approves the text of the patent as granted. Thus the Appellant's letter of 31 July 2006 referred to in point III above is a request that the decision of the Opposition Division to revoke the patent be maintained and also indicates that the Appellant is neither interested in the continuation of the appeal, nor in

having a decision in respect of the appeal under Article 111 EPC.

3. The Appellant made it clear through his representative's letter of 31 July 2006 (see point III above):
 - that he no longer approves of the text in which the patent was granted, or any other text,
 - that no text will be submitted by stating that "Therefore, revocation of the patent is expected".
4. In such a situation a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision to dismiss the appeal, without going into substantive issues, with the effect that the patent remains revoked.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

N. Maslin

A. Nuss