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**Datasheet for the decision  
of 8 May 2009**

**Case Number:** T 0042/08 - 3.3.05

**Application Number:** 00964010.3

**Publication Number:** 1204596

**IPC:** C01F 7/00

**Language of the proceedings:** EN

**Title of invention:**

Quasi-crystalline boehmites containing additives

**Patentee:**

Albemarle Netherlands B.V.

**Opponent:**

Sasol Germany GmbH

**Headword:**

Boehmites/ALBEMARLE

**Relevant legal provisions:**

EPC Art. 113(2)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Revocation of the patent (text in which the patent was granted no longer approved by patent proprietor)"

**Decisions cited:**

T 0073/84, T 0765/91

**Catchword:**

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Case Number: T 0042/08 - 3.3.05

**DECISION**  
of the Technical Board of Appeal 3.3.05  
of 8 May 2009

(Opponent)

Sasol Germany GmbH  
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D-20537 Hamburg (DE)

**Representative:**

Schupfner, Georg  
Müller Schupfner & Partner  
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**Respondent:**

(Patent Proprietor)

Albemarle Netherlands B.V.  
Stationsplein 4  
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**Representative:**

Rasser, Jacobus Cornelis  
Howrey LLP  
Rembrandt Tower, 31st Floor  
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**Decision under appeal:**

Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
2 November 2007 concerning maintenance of  
European patent No. 1204596 in amended form.

**Composition of the Board:**

**Chairman:** G. Raths  
**Members:** J.-M. Schwaller  
H. Preglau

## **Summary of Facts and Submissions**

- I. This appeal was lodged by the opponent against the interlocutory decision of the opposition division maintaining the European patent 1 204 596 in amended form.
  
- II. In a letter dated 28 April 2009, the respondent's representative notified that its client - the patent proprietor - no longer approved the text in which the patent was granted and that it would not be submitting a reply. Eventually, it requested - in line with the decision T 0073/84 - the termination of the appeal proceedings by a decision ordering the revocation of the patent without going into substantive issues.

## **Reasons for the Decision**

1. During the appeal proceedings, the patent proprietor withdrew its approval of the text of the patent as maintained by the opposition division and at the same time stated that it would not be submitting an amended text. There is therefore no text of the patent on the basis of which the board can consider the appeal: under Article 113(2) EPC the European Patent Office must consider the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
  
2. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will. If the patent proprietor withdraws his approval of the text of the patent and declares that it will not be submitting an amended text,

it may be inferred that it wishes to prevent any text whatever of the patent from being maintained.

3. Since it is not provided for in the Convention that the patent proprietor can terminate the proceedings by telling the EPO that it is surrendering the European Patent, but at the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty, the only possibility in such a case is - as established by the case law of the boards of appeal, in particular in the decisions T 73/84 (OJ EPO 1985, 241) or T 0765/91 (reasons, point 2.) - to revoke the patent.

## **Order**

### **For these reasons it is decided that:**

The contested decision is set aside and the patent is revoked.

The Registrar:

The Chairman:

C. Vodz

G. Rath