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**Datasheet for the decision
of 6 June 2012**

Case Number: T 0044/08 - 3.3.03

Application Number: 98111628.8

Publication Number: 872507

IPC: C08G 64/30

Language of the proceedings: EN

Title of invention:

Process for the preparation of polycarbonates by melt-
polycondensation

Patent Proprietor:

DAICEL CHEMICAL INDUSTRIES, LTD.

Opponent:

Bayer Materialscience AG

Headword:

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Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"No text agreed by the patent proprietor"

Decisions cited:

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Catchword:

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Case Number: T 0044/08 - 3.3.03

D E C I S I O N
of the Technical Board of Appeal 3.3.03
of 6 June 2012

Appellant:
(Opponent)
Bayer MaterialScience AG
Law and Patents
Patents and Licensing
D-51368 Leverkusen (DE)

Representative:
Klimiuk, Meike
Bayer MaterialScience AG
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Gebäude Q18
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Respondent:
(Patent Proprietor)
DAICEL CHEMICAL INDUSTRIES, LTD.
1, Teppo-cho
Sakai-shi, Osaka (JP)

Representative:
Grünecker, Kinkeldey
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 22 November 2007 rejecting the opposition filed against European patent No. 872507 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman: B. ter Laan
Members: D. Marquis
C. Vallet

Summary of Facts and Submissions

- I. The appeal contests the decision of the opposition division against European patent N° 0 872 507 (application N° 98 111 628.8) posted on 22 November 2007, rejecting the opposition pursuant to Article 101(2) EPC.
- II. On 09 January 2008 the opponent filed an appeal against this decision and paid the appeal fee on the same day. The statement setting out the grounds of appeal was submitted by letter dated and received on 20 March 2008. In this letter the appellant requested that the decision of the opposition division be set aside and that the patent be revoked. Furthermore the appellant filed an auxiliary request for oral proceedings.
- III. With a letter dated 11 August 2008, the respondent requested that the appeal be dismissed.
- IV. In a communication pursuant to Rule 115(1) EPC, sent on 23 February 2012, the Board summoned the parties to oral proceedings to take place on 04 July 2012.
- V. With a letter dated 29 May 2012, the proprietor stated:
"The applicant/patentee herewith declares that he no longer approves the text of the above-identified European patent as granted. Furthermore it is submitted that the patentee also no longer approves the text of amended claims and specification pages submitted so far during the proceedings and also does not intend to submit anything further in the present proceedings."

Reasons for the Decision

1. The appeal is admissible.
2. Under the provisions of Article 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted or agreed by the proprietor of the patent.

In the present case the proprietor clearly indicated in his letter dated 29 May 2012 that he no longer approved the text of the opposed patent as well as the text of amended claims and specification pages submitted during the proceedings and that he did not intend to submit any further amended claims.

As a consequence, the Board, noting the absence of any text approved by the proprietor, has to revoke the patent.

Order

For these reasons it is decided that:

1. The decision of the opposition division dated 22 November 2007 is set aside.
2. European patent No. 872507 is revoked.

The registrar:

The Chairman:

E. Goergmaier

B. ter Laan