

**Internal distribution code:**

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

**Datasheet for the decision  
of 13 October 2014**

**Case Number:** T 0117/11 - 3.2.07  
**Application Number:** 05256729.4  
**Publication Number:** 1652952  
**IPC:** C23C4/12, H05H1/42, F01D5/28,  
F01D5/00, B23P6/00  
**Language of the proceedings:** EN

**Title of invention:**

Methods for repairing workpieces using microplasma spray coating

**Patent Proprietor:**

United Technologies Corporation

**Opponent:**

Siemens Aktiengesellschaft

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision -  
text or agreement to text withdrawn by patent proprietor -  
patent revoked

**Decisions cited:**

T 0073/84, T 0186/84

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 0117/11 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 13 October 2014**

**Appellant:** Siemens Aktiengesellschaft  
(Opponent) Wittelsbacherplatz 2  
80333 München (DE)

**Representative:** Kaiser, Axel  
Siemens AG  
Postfach 22 16 34  
80506 München (DE)

**Respondent:** United Technologies Corporation  
(Patent Proprietor) United Technologies Building,  
1 Financial Plaza  
Hartford, CT 06101 (US)

**Representative:** Leckey, David Herbert  
Dehns  
St Bride's House  
10 Salisbury Square  
London  
EC4Y 8JD (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 November 2010 concerning maintenance of the  
European Patent No. 1652952 in amended form.**

**Composition of the Board:**

**Chairman** H. Meinders  
**Members:** H. Hahn  
O. Loizou

## **Summary of Facts and Submissions**

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division to maintain European Patent 1 652 952 in amended form. It requested explicitly that the decision under appeal be set aside and implicitly that the patent be revoked, since in the opposition proceedings it had requested full revocation of the patent in suit. Oral proceedings were requested as an auxiliary request.
- II. The respondent (patent proprietor) requested at this stage that the patent be maintained on the basis of the claims of the main request (i.e. the patent with the claims as upheld by the Opposition Division), i.e. to dismiss the appeal, or alternatively that the patent be maintained on the basis of the claims of one of the first to sixth auxiliary requests, all as re-filed or as filed with its reply to the statement of grounds of appeal dated 3 August 2011. In case that the Board did not intend to maintain the patent on the basis of the main request oral proceedings were requested.
- III. With its summons dated 30 July 2014 the Board summoned the parties to oral proceedings.
- IV. With its fax dated 6 October 2014 the respondent stated "We hereby disapprove the text for grant for this patent. The hearing scheduled for 5 November will therefore not go ahead and so there is no longer any requirement for interpreters".

In a telephone conversation held on 7 October 2014 between the registrar of the Board and the representative of the respondent the latter was asked to clarify its requests.

With its letter dated 7 October 2014 submitted by fax on the same date the respondent stated "Further to our letter of 6 October 2014, we confirm that we disapprove the text for grant for this patent, we withdraw all current requests and will not be filing any new requests."

- V. On 7 October 2014 the Board cancelled the oral proceedings.

### **Reasons for the Decision**

1. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. 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 as previously amended.
3. In the present case the respondent confirmed that "we disapprove the text for grant for this patent, we withdraw all current requests and will not be filing any new requests" (see point IV above).

The Board considers the respondent's declaration that it no longer approves the text intended for grant to mean that the respondent no longer approves the text of the patent as it was intended with the impugned decision for maintenance of the patent.

The Board further notes the respondent's statement that it will not be filing any other requests.

In a situation as the present case a substantive requirement for maintaining the patent is not fulfilled and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see e.g. decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79, reasons point 5).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated