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**Datasheet for the decision  
of 25 February 2013**

**Case Number:** T 0431/11 - 3.3.09

**Application Number:** 97936379.3

**Publication Number:** 915752

**IPC:** B32B 7/10

**Language of the proceedings:** EN

**Title of invention:**  
Coextruded laminate

**Patent Proprietor:**  
E.I. du Pont de Nemours and Company

**Opponent:**  
Evonik Degussa GmbH

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
"No text agreed by the patentee - revocation of the patent"

**Decisions cited:**  
T 0601/98

**Catchword:**  
-



Case Number: T 0431/11 - 3.3.09

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.09  
of 25 February 2013

**Appellant:**  
(Opponent)

Evonik Degussa GmbH  
Paul-Baumann-Straße 1  
D-45764 Marl (DE)

**Representative:**

Polypatent  
An den Gärten 7  
D-51491 Overath (DE)

**Respondent:**  
(Patent Proprietor)

E.I. du Pont de Nemours and Company  
1007 Market Street  
Wilmington, DE 19898 (US)

**Representative:**

Matthews, Derek Peter  
Dehns  
St Bride's House  
10 Salisbury Square  
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**Decision under appeal:**

Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
5 January 2011 concerning maintenance of the  
European patent No. 915752 in amended form.

**Composition of the Board:**

**Chairman:** W. Sieber  
**Members:** J. Jardón Álvarez  
K. Garnett

## **Summary of Facts and Submissions**

- I. In its interlocutory decision posted on 5 January 2011, the opposition division decided that the European patent No. 0 915 752 could be maintained in amended form according to Article 101(3) EPC.
- II. The opponent, Evonik Degussa GmbH, lodged an appeal against this decision on 19 February 2011 and paid the appeal fee on the same day. The statement of grounds of appeal was filed on 5 May 2011.
- III. In a letter dated 15 February 2013 the patent proprietor, E.I. du Pont de Nemours and Company, informed the board that it will not be represented at the oral proceedings scheduled to take place on 19 April 2013 and stated:  
"I hereby withdraw all currently pending requests of the Patentee. The Patentee no longer approves of the text in which the Patent was granted and wishes for it to be revoked."

## **Reasons for the Decision**

1. The appeal is admissible.
2. 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. 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 (see, for instance T 601/98).

**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

M. Cañueto Carbajo

W. Sieber