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**Datasheet for the decision
of 15 November 2013**

Case Number: T 0441/11 - 3.2.07

Application Number: 03293300.4

Publication Number: 1433877

IPC: C23C 22/34

Language of the proceedings: EN

Title of invention:
Pretreatment method for coating

Patent Proprietor:
Chemetall GmbH

Opponent:
Henkel AG & Co. KGaA

Headword:
-

Relevant legal provisions:
EPC 1973 Art. 113(2)

Keyword:
"Basis of decision - revocation of the patent at request of
patent proprietor"

Decisions cited:
T 0073/84

Catchword:
-



Case Number: T 0441/11 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 15 November 2013

Appellant: Chemetall GmbH
(Patent Proprietor) Trakehner Strasse 3
D-60487 Frankfurt am Main (DE)

Representative: Hübner, Günter
Chemetall GmbH
Patente, Marken & Lizenzen
Trakehner Strasse 3
D-60487 Frankfurt am Main (DE)

Respondent: Henkel AG & Co. KGaA
(Opponent) Henkelstrasse 67
D-40589 Düsseldorf (DE)

Representative: Kuhnert, Oliver
Henkel AG & Co. KGaA
VTP Patente
D-40191 Düsseldorf (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
on 10 December 2010 concerning maintenance of
European patent No. 1433877 in amended form.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
I. Beckedorf

Summary of Facts and Submissions

- I. The proprietor (appellant) has filed an appeal against the decision of the opposition division maintaining European patent No. 1 433 877 as amended.

The appellant requested that the decision under appeal be set aside and the patent be maintained as granted or alternatively on the basis of auxiliary request 1 or 2 filed with the statement setting out the grounds of appeal.

It furthermore filed an auxiliary request for oral proceedings.

The respondent (opponent) has, besides a referral to a change concerning its representation, not replied in substance to the appeal.

- II. The Board summoned for oral proceedings before the Board, to be held on 3 December 2013. In the annex to the summons the Board gave its provisional opinion concerning the issues it considered to be relevant.
- III. In response to the summons the appellant declared in its letter dated 25 June 2013 that it no longer agrees to the maintenance of the patent as granted and that it does not intend to file an amended version of the claims.

It further requested that the patent be revoked in its entirety, with effect for all designated states.

IV. In view of this request the oral proceedings were cancelled.

Reasons for the Decision

1. The appellant's request for revocation of the patent indicates that it withdraws its agreement to the text of the patent as granted as well as to the text in which the patent was maintained in amended form according to the decision under appeal and that it does not intend to submit any other text for the maintenance of the patent.

2. Article 113(2) EPC 1973, however, stipulates that the EPO may decide upon a European patent only in the text submitted to it, or agreed by the patent proprietor. This substantive requirement for maintaining the contested patent is not fulfilled in the present case and therefore the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see e.g. decision T 73/84, OJ EPO 1985, 241).

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