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Datasheet for the decision of 3 January 2018

Case Number: T 0381/12 - 3.3.10

Application Number: 01950851.4

Publication Number: 1303471

IPC: C07C27/10, C07C67/00, C07C67/05, C07C51/02, C07C51/16, B01J23/44, B01J23/48, B01J23/56, B01J23/58, B01J23/52, B01J37/16, C07C67/055

Language of the proceedings: EN

Title of invention:
PREPARATION OF SHELL IMPREGNATED CATALYST AND ITS USE FOR PRODUCTION OF VINYL ACETATE

Patent Proprietor:
Saudi Basic Industries Corporation

Opponent:
Celanese International Corporation

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Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked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, T 0237/86, T 0459/88, T 0655/01, T 1526/06

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0381/12 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 3 January 2018

Appellant: (Patent Proprietor)	Saudi Basic Industries Corporation P.O. Box 5101 Riyadh 11422 (SA)
Representative:	Modiano, Micaela Nadia Modiano & Partners Thierschstrasse 11 80538 München (DE)
Appellant: (Opponent)	Celanese International Corporation Clear Lake Technical center 9502 Bayport Boulevard Pasadena TX 77507 (US)
Representative:	dompatent von Kreisler Selting Werner - Partnerschaft von Patent- und Rechtsanwälten mbB Deichmannhaus am Dom Bahnhofsvorplatz 1 50667 Köln (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 20 January 2012 concerning maintenance of the European Patent No. 1303471 in amended form.**

Composition of the Board:

Chairman	P. Gryczka
Members:	R. Pérez Carlón
	F. Blumer

Summary of Facts and Submissions

I. The appeal lies from the interlocutory decision of the opposition division which maintained European patent No. 1 303 471 in the form of the main request then pending. Both the opponent and the patent proprietor appealed the decision.

II. In a communication annexed to the summons for oral proceedings dated 2 May 2017, the board informed the parties *inter alia* that it tended to consider the patent proprietor's appeal not admissible, as it appeared not to be adversely affected by the contested decision.

III. With a letter dated 30 May 2017, the opponent informed the board that it would not be attending the already scheduled oral proceedings.

IV. With a letter dated 29 June 2017, the patent proprietor announced that it would not be attending the oral proceedings, withdrew its appeal and all requests then pending, and informed the board that it no longer approved either the text in which the patent was maintained in amended form, or the text in which the patent was granted.

V. In a communication dated 19 July 2017, the board informed the parties that it intended to set aside the decision under appeal and revoke the patent, in accordance with decision T 73/84 (OJ EPO 1985, 241). The board cancelled the oral proceedings already scheduled for 26 September 2017, and set a time limit of two months for the parties to comment on the intended course of action. None of the parties replied.

VI. The opponent requests that the decision under appeal be set aside and the patent revoked.

VII. All the requests of the patent proprietor were withdrawn.

Reasons for the Decision

1. The appeal of the opponent is admissible.

The patent proprietor withdrew its appeal with letter dated 29 June 2017. The admissibility of the patent proprietor's appeal, which was questioned by the board in a communication dated 2 May 2017, has no bearing on the outcome of the present proceedings. For this reason, it is not necessary to decide on this point.

2. During these appeal proceedings, the patent proprietor withdrew his approval of the text of the patent as granted and as maintained by the opposition division.

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. There is, however, no text of the patent on the basis of which the board can consider the appeal.

3. 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 as granted and of the text in which the patent was maintained, and withdraws every other request on file, it may be inferred that it wishes to

prevent any text whatever of the patent from being maintained.

4. In the case of T 73/84 (OJ EPO 1985, 241 see especially Headnote and Reasons) the board decided that, if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 237/86 (OJ EPO 1988, 261), T 459/88 (OJ EPO, 1990, 425), T 655/01 (not published in OJ EPO) and T 1526/06 (not published OJ EPO).

5. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out in the above-mentioned decisions. The patent must therefore be revoked without going into any substantive issue.

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:

C. Rodríguez Rodríguez P. Gryczka

Decision electronically authenticated