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Datasheet for the decision of 20 October 2014

Case Number: T 1815/13 - 3.2.06

Application Number: 06003796.7

Publication Number: 1707302

IPC: B23K35/26, C22C13/00

Language of the proceedings: EN

Title of invention:
Pb-free solder alloy compositions comprising essentially tin (Sn), silver (Ag), copper (Cu), and phosphorus (P)

Patent Proprietor:
AOKI LABORATORIES LTD.

Opponent:
Goldbach, Klara

Relevant legal provisions:
EPC Art. 113(2)

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text or agreement to text withdrawn by patent proprietor

Decisions cited:
T 0186/84

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Case Number: T 1815/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 20 October 2014

Appellant: (Opponent)	Goldbach, Klara Leopoldstraße 4 80802 München (DE)
Representative:	Grünecker, Kinkeldey, Stockmair & Schwanhäusser Leopoldstraße 4 80802 München (DE)
Respondent: (Patent Proprietor)	AOKI LABORATORIES LTD. G/F., Tung Ming Industrial Bldg., NO.3 San Yick Lane Tuen Mun, N.T. (HK)
Representative:	Casalonga, Axel Casalonga & Partners Bayerstraße 73 80335 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 11 June 2013 rejecting the opposition filed against European patent No. 1707302 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	M. Harrison
Members:	G. de Crignis
	W. Ungler

Summary of Facts and Submissions

I. The opposition against European patent No. 1 707 302 was rejected by the decision of the Opposition Division. Against this decision an appeal was filed by the opponent (appellant). The statement setting out the grounds of appeal was filed on 18 October 2013.

II. The appellant requested that the impugned decision be set aside and the patent in suit be revoked.

III. With its letter of 30 September 2014 the patent proprietor (respondent) stated that it no longer agreed with the claims of the patent as granted and did not wish to propose any amendments or different set of claims.

Reasons for the Decision

1. The appeal is admissible.

2. In the letter of 30 September 2014 the patent proprietor withdrew its agreement to the text in which the patent was granted (and upheld by the opposition division) and stated that it did not intend to submit any other text for the maintenance of the patent.

3. Article 113(2) EPC, however, stipulates that the EPO may decide upon a European patent only in the text submitted to it, or agreed to by the patent proprietor. This substantive requirement for maintaining the contested patent is not fulfilled in the present case.

4. The patent is therefore to be revoked, without going into the substantive issues (see also 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:

M. H. A. Patin M. Harrison

Decision electronically authenticated