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Datasheet for the decision of 28 February 2019

Case Number: T 0166/14 - 3.3.02

Application Number: 04255357.8

Publication Number: 1502508

IPC: A01N43/80, A01P1/00

Language of the proceedings: EN

Title of invention:
Synergistic microbicidal combinations

Patent Proprietor:
ROHM AND HAAS COMPANY

Opponent:
Thor GmbH

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Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked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

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0166/14 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 28 February 2019

Appellant: (Opponent)	Thor GmbH Landwehrstrasse 1 67346 Speyer (DE)
Respondent: (Patent Proprietor)	ROHM AND HAAS COMPANY 100 Independence Mall West Philadelphia, PA 19106-2399 (US)
Representative:	Houghton, Mark Phillip Patent Outsourcing Limited 1 King Street Bakewell, Derbyshire DE45 1DZ (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 21 November 2013 concerning maintenance of the European Patent No. 1502508 in amended form.**

Composition of the Board:

Chairman	M. O. Müller
Members:	A. Lenzen
	M. Blasi

Summary of Facts and Submissions

I. An appeal was lodged by the opponent ("appellant" hereinafter) against the interlocutory decision of the opposition division that European patent No. 1 502 508 in amended form met the requirements of the EPC.

II. The appellant requested that the decision under appeal be set aside and that the patent be revoked (main request). As an auxiliary measure, it requested oral proceedings.

III. Both parties were summoned to oral proceedings to take place on 21 March 2019.

IV. In its letter dated 20 February 2019 the patent proprietor ("respondent" hereinafter) stated:

"The Proprietor no longer approves the text of the above-identified patent.

Further, the Proprietor hereby withdraws all requests filed during the opposition and appeal proceedings, including all auxiliary requests.

In addition, the Proprietor hereby withdraws its request that oral proceedings be held.

It is therefore expected that the Opposition Division will cancel the oral proceedings scheduled for 21 March 2019 and revoke the Patent."

V. Both parties were informed by a communication dated 26 February 2019 that the oral proceedings had been cancelled.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

2. The respondent no longer approves the text in which the patent was granted and has withdrawn all pending claim requests. Therefore, there is no longer any text of the patent in the proceedings on the basis of which the board can consider compliance with the requirements of the EPC.

3. It is established case law that in the present circumstances the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition 2016, section IV.C.5.2). The board has no reason to deviate from this consistent approach of the boards of appeal, with the consequence that the patent is to be revoked.

4. As revocation of the patent complies with the request of the appellant, there was no need to hold oral proceedings and the decision can be issued in writing.

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:

N. Maslin M. O. Müller

Decision electronically authenticated