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**Datasheet for the decision
of 28 November 2016**

Case Number: T 0203/14 - 3.3.09

Application Number: 03794458.4

Publication Number: 1543085

IPC: C09J123/08

Language of the proceedings: EN

Title of invention:

IMPROVED POLYOLEFIN-BASED ADHESIVE RESINS AND METHOD OF MAKING
ADHESIVE RESINS

Patent Proprietor:

MSI Technology, LLC

Opponent:

Westlake Chemical Corporation

Headword:

Relevant legal provisions:

EPC Art. 101, 111(1), 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 2405/12

Catchword:



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Chambres de recours

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Case Number: T 0203/14 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 28 November 2016

Appellant: Westlake Chemical Corporation
(Opponent) 2801 Post Oak Boulevard
Houston TX 77056 (US)

Representative: Best, Michael
Lederer & Keller
Patentanwälte Partnerschaft mbB
Unsöldstrasse 2
80538 München (DE)

Respondent: MSI Technology, LLC
(Patent Proprietor) Suite 440,
3940 Ventura Drive
Arlington Heights, IL 60004 (US)

Representative: Carpmaels & Ransford LLP
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
25 November 2013 concerning maintenance of the
European Patent No. 1543085 in amended form.

Composition of the Board:

Chairman W. Sieber
Members: N. Perakis
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent against the interlocutory decision of the opposition division to maintain European patent N° 1 543 085 in amended form on the basis of the claims filed as main request with letter of 24 September 2013. The appellant requested that the decision be set aside and that the patent be revoked in its entirety.
- II. On 28 November 2016 oral proceedings were held before the board. Following a discussion of the respondent's (patent proprietor's) requests then on file and the requests filed at the oral proceedings respectively, the respondent withdrew all requests then on file and stated that it no longer approved the text of the granted patent. It filed the corresponding statement in writing:

"The proprietor of EP 1 53 085 disapproves the text for grant. All requests currently on file in the appeal case T 203/14 are withdrawn".

Reasons for the Decision

1. Article 113(2) EPC requires that the European Patent Office shall decide upon the European patent only in the text submitted to and agreed on by the proprietor of the patent.
2. Agreement cannot be deemed to be given if the proprietor, without submitting an amended text, expressly states that he/she no longer approves the text of the patent as granted or previously amended.

3. In the present situation, where there is no text of the patent on which basis the Board can consider the appeal of appellant/opponent, the only possibility available to the Board is to revoke the patent as envisaged in Articles 111(1) together with 101 EPC. In this context, reference is made to the Case Law of the Boards of Appeal of the EPO, in particular T 2405/12 and decisions cited therein.

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

Decision electronically authenticated