

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 13 April 2016**

Case Number: T 0297/14 - 3.3.03

Application Number: 02779464.3

Publication Number: 1434818

IPC: C08K5/315, C08K5/3445

Language of the proceedings: EN

Title of invention:

A METHOD OF PRODUCING COLOURED PLASTICS OR COLOURED POLYMERIC PARTICLES

Patent Proprietor:

BASF SE

Opponent:

LANXESS Deutschland 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Basis of decision - text or agreement to text withdrawn by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, T 0186/84

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0297/14 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 13 April 2016

Appellant: LANXESS Deutschland GmbH
(Opponent) Kennedyplatz 1
50679 Köln (DE)

Representative: Herbold, Matthias
LANXESS Deutschland GmbH
LIP-IPR
LANXESS Tower
Kennedyplatz 1
50569 Köln (DE)

Respondent: BASF SE
(Patent Proprietor) Carl-Bosch-Strasse 38
67056 Ludwigshafen am Rhein (DE)

Representative: BASF IP Association
BASF SE
ZRX-C6
67056 Ludwigshafen (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
12 December 2013 concerning maintenance of the
European Patent No. 1434818 in amended form.

Composition of the Board:

Chairman F. Rousseau
Members: O. Dury
G. Weiss

Summary of Facts and Submissions

I. The appeal by the opponent (appellant) lies against the opposition division's interlocutory decision maintaining in amended form European patent No. EP 1 434 818 according to the main claim request filed with letter of 19 February 2010 and an amended description filed during the oral proceedings.

II. In its statement setting out the grounds of appeal submitted on 17 April 2014 the appellant requested that the opposition division's decision be set aside and the patent be revoked.

III. In its rejoinder of 8 September 2014 the patent proprietor (respondent) requested the dismissal of the appeal (main request) or, alternatively, the maintenance of the patent in amended form according to any of auxiliary requests 1-7 filed therewith.

IV. With letter of 14 December 2015 the parties were summoned to oral proceedings scheduled to take place on 27 September 2016.

V. With a letter of 4 April 2016 the respondent stated:

"In regard to the summons to oral proceedings pursuant to Rule 115(1) EPC dated December 14, 2015 with oral proceedings scheduled for September 27, 2016, the patent proprietor will not attend said oral proceedings.

Furthermore, the patent proprietor does no longer agree on a set of claims presently being on file. The patent proprietor will not file a new set of claims. Accordingly, the patent proprietor requests the

revocation of the European Patent EP 1434818 B1."

- VI. With letter of 7 April 2016 the oral proceedings were cancelled.

Reasons for the Decision

1. Under the provisions of Art. 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted to it or agreed by the proprietor of the patent.

2. In the present case the respondent/proprietor unambiguously indicated in his letter dated 4 April 2016 that he withdrew his approval of the text in which the patent had been maintained by the opposition division's decision and expressed his disapproval of any version of the text of the then pending auxiliary requests. Also, the respondent explicitly stated that he would not submit any further amended claims and even requested the revocation of the patent in suit (see point V above).

Therefore, agreement by the patent proprietor pursuant to Art. 113(2) EPC cannot be held to be given.

3. Under such circumstances a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see e.g. decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. European patent No. EP 1 434 818 is revoked.

The Registrar:

The Chairman:



B. ter Heijden

F. Rousseau

Decision electronically authenticated