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**Datasheet for the decision
of 23 March 2017**

Case Number: T 1357/14 - 3.3.03

Application Number: 04740639.2

Publication Number: 1641862

IPC: C08G77/04, C09D5/16, C09D143/04

Language of the proceedings: EN

Title of invention:
SILYL ESTER COPOLYMER COMPOSITIONS

Patent Proprietor:
Akzo Nobel Coatings International B.V.

Opponents:
Jotun A/S
PPG Europe B.V.

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Basis of decision - text or agreement to text withdrawn by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



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Case Number: T 1357/14 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 23 March 2017

Appellant: Akzo Nobel Coatings International B.V.
(Patent Proprietor) Velperweg 76
6824 BM Arnhem (NL)

Representative: Akzo Nobel IP Department
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6824 BM Arnhem (NL)

Appellant: Jotun A/S
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Appellant: PPG Europe B.V.
(Opponent 2) Amsterdamseweg 14
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Representative: Appleyard Lees IP LLP
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
17 April 2014 concerning maintenance of the
European Patent No. 1641862 in amended form.

Composition of the Board:

Chairman D. Semino
Members: O. Dury
 C. Brandt

Summary of Facts and Submissions

- I. The appeals by the patent proprietor (appellant 1) and each of opponents 1 and 2 (appellants 2 and 3) lie from the opposition division's interlocutory decision maintaining patent No. EP 1 641 862 in amended form.
- II. With letter of 20 March 2017, which was sent in reply to the Board's communication in which issues to be discussed at the oral proceedings were identified, appellant 1 filed the following declaration:
- "Please be informed that Proprietor no longer approves the text in which the above-mentioned patent was granted. Proprietor also no longer approves any amendments filed in the opposition and appeal procedure."
- III. The oral proceedings which had been arranged for 7 June 2017 were thereafter cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC the European Patent Office must consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle is part of the common provisions governing procedure and is therefore to be strictly observed also in opposition and opposition appeal proceedings.
2. In the present case appellant 1 (the patent proprietor) withdrew during the appeal proceedings their approval

of the text of the patent as granted and as upheld by the opposition division, including all the requests submitted either during the opposition or appeal proceedings, with the consequence that there is no text of the patent on the basis of which the Board can consider the case.

3. While the procedure for revocation pursuant to Articles 105a to 105c EPC is not available during opposition and opposition appeal proceedings, it is the consistent approach of the case law that, if the patent proprietor states that he no longer approves the text in which the patent was granted and does not submit or withdraws any amended text, the patent as a consequence of Article 113(2) EPC is to be revoked without substantive examination as to patentability, which becomes impossible in the absence of a valid text (see Case Law of the Boards of Appeal of the EPO, 8th Edition 2016, IV.C.5.2, in particular T 73/84, OJ EPO 1985, 241 and the numerous decisions following the same approach).

4. The Board has no reason in the present case to deviate from the consistent approach of the case law, with the consequence that the patent has to be revoked.

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:



P. Martorana

D. Semino

Decision electronically authenticated