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**Datasheet for the decision  
of 23 October 2019**

**Case Number:** T 0048/15 - 3.3.02  
**Application Number:** 06754770.3  
**Publication Number:** 1879453  
**IPC:** A01N25/30, A01N25/24,  
B01F17/00, C11D1/65, C11D1/655  
**Language of the proceedings:** EN

**Title of invention:**

AGROCHEMICAL COMPOSITIONS CONTAINING NAPHTHALENE SULFONATE  
DERIVATIVES AND NITROGEN-CONTAINING SURFACTANTS

**Patent Proprietor:**

Nouryon Chemicals International B.V.

**Opponent:**

BASF SE

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2), 101

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84, T 0220/12, T 0381/12, T 2680/17, T 0655/01

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0048/15 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 23 October 2019**

**Appellant:** BASF SE  
(Opponent) GVX/I  
67056 Ludwigshafen (DE)

**Representative:** BASF IP Association  
BASF SE  
G-FLP-C006  
67056 Ludwigshafen (DE)

**Respondent:** Nouryon Chemicals International B.V.  
(Patent Proprietor) Velperweg 76  
6824BM Arnhem (NL)

**Representative:** LKGlobal UK Ltd.  
23 Skylines Village  
London E14 9TS (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
22 October 2014 concerning maintenance of the  
European Patent No. 1879453 in amended form.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** P. O'Sullivan  
P. de Heij

## **Summary of Facts and Submissions**

- I. By way of its interlocutory decision, the opposition division found that European Patent No. 1 879 453 in amended form met the requirements of the European Patent Convention.
- II. The opponent (appellant) filed an appeal against that decision, requesting revocation of the patent.
- III. The patent was transferred to Akzo Nobel Chemicals International B.V., later renamed Nouryon Chemicals International B.V. (hereinafter "the respondent").
- IV. With the letter of 29 August 2019, the respondent stated the following: "*... it is herewith indicated that the applicant disapproves the text on file and will not attend oral proceedings*". Oral proceedings before the board had been scheduled for 5 December 2019.

## **Reasons for the Decision**

1. The text on file to which the respondent refers consists of the main request and first to fifth auxiliary requests filed with the reply to the grounds of appeal dated 7 October 2015. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be observed also in opposition and opposition appeal proceedings.
2. The respondent, by withdrawing approval of the text on file has thereby withdrawn its approval of any text for

maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text on the basis of which the board can maintain the patent.

3. In view of the above, the board concludes that the patent must be revoked as envisaged in Article 101 EPC. This conclusion is also in line with established case law following decision T 73/84, OJ 1985, 241 (see e.g. T 655/01 of 11 November 2005; T 220/12 of 22 June 2015; T 381/12 of 3 January 2018; T 2680/17 of 2 April 2019).

## **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