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**Datasheet for the decision  
of 2 February 2018**

**Case Number:** T 0211/15 - 3.3.10

**Application Number:** 03777896.6

**Publication Number:** 1563032

**IPC:** C09K5/04

**Language of the proceedings:** EN

**Title of invention:**

COMPOSITIONS CONTAINING FLOURINE SUBSTITUTED OLEFINS

**Patent Proprietor:**

Honeywell International Inc.

**Opponents:**

ARKEMA FRANCE

Mexichem Amanco Holding S.A. de C.V.

Bayerische Motoren Werke

Aktiengesellschaft

Asahi Glass Company Limited

Daikin Industries, Ltd.

ACEA European Automobile Manufacturers Association

**Headword:**

**Relevant legal provisions:**

EPC Art. 104(1), 112(1)

EPC R. 100(1)

**Keyword:**

Apportionment of costs - (no)

**Decisions cited:**

T 2165/08

**Catchword:**



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

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Case Number: T 0211/15 - 3.3.10

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.10**  
**of 2 February 2018**

**Appellant:** Honeywell International Inc.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 15 January 2015  
revoking European patent No. 1563032 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** P. Gryczka  
**Members:** R. Pérez Carlón  
F. Blumer

### **Summary of Facts and Submissions**

- I. The appellant (patent proprietor) lodged an appeal against the decision of the opposition division to revoke European patent No.1 536 032.
- II. With a letter dated 4 January 2017, prior to the oral proceedings scheduled 17 January 2017, the sole appellant withdrew its appeal.
- III. Respondent 1 (opponent 1) requested with a letter dated 9 January 2017 that costs be awarded against the appellant. It argued that its behaviour represented an abuse of proceedings for two reasons.

Firstly, withdrawing the appeal at such a short notice before the oral proceedings had obliged the respondent to waste considerable time on preparation work which had turned out to be unnecessary.

Secondly, the patent in suit had considerable economic value and was one of a large number of divisional applications, some of them directed to similar subject-matter. By withdrawing its appeal, the appellant was preventing any decision from being taken on that subject-matter.

- IV. The appellant argued in its letter dated 31 March 2017 that the principle of free party disposition entitled it to withdraw its appeal at any time. The benefits that respondent 1 derived from the appeal's withdrawal would offset the costs it might have incurred, even if these costs could have been avoided. The appellant also argued that it had the right to file divisional applications under the EPC, should not be penalised for doing so and, in any case, the claims of the divisional

applications still pending, or already granted, were different from those of the patent in suit.

- V. Respondents 2 to 6 did not make any submissions about the costs issue.
- VI. In reply to a board's communication sent on 9 May 2017, the appellant and respondent 1 confirmed that they did not want oral proceedings on the issue of costs.
- VII. The final requests of the parties were the following:
- Respondent 1 requests that all its costs be reimbursed.
  - The appellant requests that the request for a different apportionment of costs be refused.

### **Reasons for the Decision**

1. The appeal is admissible.
2. As the appellant in the present appeal proceedings has withdrawn its appeal, the sole issue remaining is the request of respondent 1 that the board awards all the costs incurred during these appeal proceedings against the appellant.
3. Costs (Article 104(1) EPC)
  - 3.1 Under Article 104(1) EPC, each party to opposition proceedings bears the costs it has incurred, unless the opposition division, for reasons of equity, orders a different apportionment of costs. This principle applies equally to opposition-appeal proceedings in

view of Article 111(1) EPC in conjunction with Rule 100(1) EPC (see T 2165/08 of 6 March 2013, Reasons 45).

3.2 Respondent 1 requested that the board award all its costs against the appellant, whose behaviour had been an abuse of proceedings.

3.2.1 It argued that, by withdrawing its appeal at such a late stage, the appellant had obliged it to perform a considerable amount of unnecessary preparatory work.

However, according to the case law (Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.C.6.2.4), an appellant is entitled to withdraw its appeal at any time. In view of the principle of free party disposition, this right may not be restricted. As a rule, the benefits that respondents derive from any withdrawal of the appeal offset costs they have incurred.

3.2.2 Respondent 1 also argued that the patent in suit had considerable economic value and was one of a large number of divisional applications, some of them directed to similar subject-matter. The withdrawal formed part of the patent proprietor's strategy of trying to avoid any substantive decision on the claimed subject-matter, and should not be allowed.

However, respondent 1 is relying only on assertions about what the strategy of the appellant might have been. In fact, the present appeal arises from the decision of the opposition division that those requests pending before it which were not inadmissible contained added subject-matter, and the board had informed the parties in a communication annexed to the summons to oral proceedings that it would consider the issues of

added subject-matter, admissibility, clarity and Rule 80 EPC, and intended to remit the case to the opposition division if any request before it did not have any of those deficiencies. So, respondent 1 cannot argue that the withdrawal of the appeal prevented the board from taking a decision on the maintenance of the patent, as it was already aware that the board was not minded to examine the patentability of the claimed subject-matter.

In addition, even if the withdrawal of the appeal was indeed an attempt to avoid a decision on the appeal's substance, as alleged by respondent 1, the appellant would still be entitled to exercise its right to withdraw the appeal, as explained in point 3.2.1 above.

3.3 Hence, the board sees no reason to order a different apportionment of costs for the present proceedings.

## **Order**

### **For these reasons it is decided that:**

The request of respondent 1 for a different apportionment of costs is refused.



The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated