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**Datasheet for the decision
of 15 June 2020**

Case Number: T 1012/15 - 3.2.05

Application Number: 08008164.9

Publication Number: 2113393

IPC: B44C3/02, B44F9/02

Language of the proceedings: EN

Title of invention:

Floor panel, method for manufacturing floor panels and transfer foil

Patent Proprietor:

Flooring Industries Limited, SARL

Opponent:

Leonhard Kurz Stiftung & Co. KG

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Withdrawal of the approval of the text of the patent

Decisions cited:

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,
T 1785/16



Beschwerdekammern

Boards of Appeal

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Case Number: T 1012/15 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 15 June 2020

Appellant: Leonhard Kurz Stiftung & Co. KG
(Opponent) Schwabacher Strasse 482
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Respondent: Flooring Industries Limited, SARL
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Representative: Schacht, Benny Marcel Corneel
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 March 2015 concerning maintenance of the
European Patent No. 2113393 in amended form.**

Composition of the Board:

Chairman P. Lanz
Members: T. Vermeulen
T. Karamanli

Summary of Facts and Submissions

I. The opponent lodged an appeal against the interlocutory decision of the opposition division finding that European patent No. 2 113 393 as amended according to auxiliary request 2 met the requirements of the European Patent Convention.

The appellant requested that the decision under appeal be set aside and that the patent be revoked.

II. In its letter of reply dated 2 December 2015, the patent proprietor (respondent) requested that the appeal be dismissed (main request) or, as an auxiliary measure, that the decision under appeal be set aside and that the patent be maintained as amended on the basis of auxiliary request 5 submitted by letter dated 19 December 2014 (first auxiliary request).

III. With a letter of 17 April 2020, the respondent informed the board that it did "no longer approve of the text in which the patent was granted or maintained by the opposition division, such that the patent be revoked".

IV. In a reply dated 5 May 2020 to a communication of the board pursuant to Rule 100(2) EPC with the date of 28 April 2020, the respondent confirmed that it did "also no longer approve the text of the patent as amended according to the present first auxiliary request, so that the patent be revoked".

Reasons for the Decision

1. 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 strictly observed also in opposition and opposition appeal proceedings.
2. 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.

During the appeal proceedings the patent proprietor explicitly withdrew its approval of the text of the granted patent, of the text of the patent as maintained by the opposition division and filed as main request in reply to the grounds of appeal, or of the first auxiliary request filed in appeal. At the same time it requested that the patent be revoked.

There is therefore no text of the patent on the basis of which the board can consider the appeal.

3. In the case T 73/84 (OJ EPO 1985, 241), it was decided that, if the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted and will not be submitting an amended text, the patent is to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 237/86 (OJ EPO 1988, 261), T 459/88 (OJ EPO, 1990, 425), T 655/01 (not published) and T 1785/16 (not published).
4. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out

in the above-mentioned decisions. Therefore, the decision under appeal must be set aside and the patent 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:



N. Schneider

P. Lanz

Decision electronically authenticated