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**Datasheet for the decision
of 26 February 2020**

Case Number: T 1685/15 - 3.3.02

Application Number: 04257945.8

Publication Number: 1527685

IPC: A01N43/80

Language of the proceedings: EN

Title of invention:
Synergistic microbicidal combination

Patent Proprietor:
ROHM AND HAAS COMPANY

Opponent:
Thor 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Basis of decision - text or agreement to text withdrawn by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

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 1685/15 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 26 February 2020

Appellant: Thor GmbH
(Opponent) Landwehrstrasse 1
67346 Speyer (DE)

Respondent: ROHM AND HAAS COMPANY
(Patent Proprietor) 100 Independence Mall West
Philadelphia, PA 19106-2399 (US)

Representative: Houghton, Marc Philip, et al
Patent Outsourcing Limited
1 King Street
Bakewell, Derbyshire DE45 1DZ (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 14 July 2015
rejecting the opposition filed against European
patent No. 1527685 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: A. Lenzen
R. Romandini

Summary of Facts and Submissions

I. This decision concerns the appeal filed by the opponent (appellant) against the opposition division's decision (decision under appeal) to reject the opponent's opposition against European patent No. 1 527 685 (patent in suit).

II. The appellant requested that the decision under appeal be set aside and the patent in suit be revoked in its entirety.

III. In its letter dated 24 January 2020 the patent proprietor (respondent) stated:

"The Proprietor no longer approves the text of the above-identified patent.

Further, the Proprietor hereby withdraws all requests filed during the opposition and appeal proceedings, including all auxiliary requests.

In addition, the Proprietor hereby withdraws its request that oral proceedings be held.

It is therefore expected that the Board of Appeal will cancel the oral proceedings scheduled for 26-28 February 2020 and revoke the Patent."

IV. Oral proceedings before the board were held on 26 February 2020. The respondent confirmed its expectation that its patent be revoked.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the European Patent Office examines, and decides upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
2. The respondent no longer approves the text in which the patent was granted and has withdrawn all pending claim requests. Therefore, there is no longer any text of the patent in the proceedings on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law that in the present circumstances the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the EPO, 9th edition, 2019, section IV.D.2). The board has no reason to deviate from this consistent approach of the boards of appeal, and so the patent is 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:



N. Maslin

M. O. Müller

Decision electronically authenticated