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**Datasheet for the decision
of 26 March 2018**

Case Number: T 1331/16 - 3.3.09

Application Number: 07715869.9

Publication Number: 1981351

IPC: A23G3/34, A23D7/005, A23L1/09,
A23L1/0524, A21D13/00

Language of the proceedings: EN

Title of invention:
COLD-GELLING THIXOTROPIC GLAZE COMPOSITION

Patent Proprietor:
CSM Nederland B.V.

Opponent:
PURATOS N.V.

Headword:

Relevant legal provisions:
EPC Art. 101, 111(1), 113(2)

Keyword:
Basis of decision - proprietor(respondent) no longer approves
the text and does not submit an amended text - patent revoked

Decisions cited:

T 2405/12

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 1331/16 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 26 March 2018

Appellant: PURATOS N.V.
(Opponent) Zone 1, Industrialaan 25
B-1702 GROOT-BIJGAARDEN (BE)

Representative: De Clercq, Ann G. Y.
De Clercq & Partners
Edgard Gevaertdreef 10a
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Respondent: CSM Nederland B.V.
(Patent Proprietor) Nienoord 13
1112 XE Diemen (NL)

Representative: Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 7 April 2016
rejecting the opposition filed against European
patent No. 1981351 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman W. Sieber
Members: N. Perakis
D. Prietzel-Funk

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent against the decision of the opposition division rejecting the opposition filed against European patent No. 1 981 351.
- II. The appellant/opponent requested that the decision of the opposition division be set aside and that the patent be revoked in its entirety.
- III. On 20 December 2016 the respondent/patent proprietor filed observations on the appeal including five auxiliary requests, and requested that the appeal be dismissed, alternatively that the patent be maintained on the basis of one of the auxiliary requests.
- IV. With letter of 20 March 2018 the respondent/patent proprietor declared:

"Please be informed that proprietor (CSM Nederland B.V.) no longer approves the text in which the patent was granted and does not want to submit an amended text. Proprietor realizes that this will lead to revocation of the patent".

Reasons for the Decision

1. Article 113(2) EPC requires that the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Agreement cannot be deemed to be given if the proprietor expressly states that it no longer approves

the text upon which the patent was granted and that it will not be submitting an amended text. 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.

3. In the present situation, where there is no text of the patent on which basis the Board can consider the appeal of the appellant/opponent, the only possibility available to the Board is to revoke the patent as envisaged in Articles 111(1) together with 101 EPC. In this context reference is made to T 2405/12 and the decisions cited therein.

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:



U. Bultmann

W. Sieber

Decision electronically authenticated