

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

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

Case Number: T 1957/16 - 3.2.03

Application Number: 03739044.0

Publication Number: 1511905

IPC: E04C2/04

Language of the proceedings: EN

Title of invention:

ANTIMICROBIAL WALLBOARD

Patent Proprietor:

MICROBAN PRODUCTS COMPANY

Opponent:

LANXESS Deutschland GmbH

Headword:

Relevant legal provisions:

EPC R. 84(1)

Keyword:

Lapse of patent in all designated states - termination of
appeal proceedings

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1957/16 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 15 July 2020

Appellant: LANXESS Deutschland GmbH
(Opponent) Kennedyplatz 1
50679 Köln (DE)

Respondent: MICROBAN PRODUCTS COMPANY
(Patent Proprietor) Suite 125,
11515 Vanstory Drive
Huntersville, NC 28078 (US)

Representative: Boulton Wade Tennant LLP
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 June 2016 concerning maintenance of the
European Patent No. 1511905 in amended form.**

Composition of the Board:

Chairman G. Ashley
Members: B. Miller
N. Obrovski

Summary of Facts and Submissions

I. European patent No. 1 511 905 (hereinafter: the patent) relates to an antimicrobial wallboard.

II. An opposition was filed against the patent, based on the grounds of Article 100(c) EPC, 100(b) EPC and of Article 100(a) EPC together with Article 56 EPC.

In the interlocutory decision the opposition division found that the contested patent met the requirements of the EPC, on the basis of the claims of the auxiliary request 5 (hereinafter: the main request) submitted in electronic form on 19 April 2016.

This decision was appealed by the opponent (hereinafter: the appellant).

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

The respondent (the patent proprietor) requested that the appeal be dismissed, alternatively that the patent be maintained on the basis of claims of one of auxiliary requests 1 to 4 submitted with the letter of reply to appeal.

IV. With the summons to oral proceedings, the Board sent a communication pursuant to Articles 15(1) and 17(2) of the Rules of Procedure of the Boards of Appeal (RPBA) indicating to the parties its preliminary, non-binding opinion of the case.

- V. In a communication by the registrar of the Board dated 15 November 2019 the parties were informed that the patent had lapsed for all the designated states and that the appeal proceedings could be continued at the request of the appellant provided that within two month from notification of this communication a request is so filed.
- VI. The appellant did not request continuation of the proceedings.

Reasons for the Decision

1. Pursuant to Rule 84(1) EPC in conjunction with Rule 100(1) EPC, proceedings are not continued after the European patent has lapsed, unless there is a request to this effect by the opponent filed within two month as from the notification by the European Patent Office of the lapse.
2. As in the present case no such request by the appealing opponent has been received within the given time limit, the proceedings are to be terminated by a decision of the Board.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated