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**Datasheet for the decision
of 12 April 2021**

Case Number: T 1441/18 - 3.3.02

Application Number: 11715568.9

Publication Number: 2563866

IPC: C09D7/00, C09D7/12

Language of the proceedings: EN

Title of invention:
IMPROVED LOW TITANIUM DIOXIDE COATINGS

Patent Proprietor:
Akzo Nobel Coatings International B.V.

Opponent:
Crown Paints Limited / Hempel A/S

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Basis of decision - text or agreement to text withdrawn by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
Boards of Appeal
Chambres de recours

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Case Number: T 1441/18 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 12 April 2021

Appellants:
(Opponents)

Crown Paints Limited
Crown House, Hollins Road
Darwen, Lancashire BB3 0BG (GB)

and

Hempel A/S
Lundtoftegårdsvej 91
2800 Kongens Lyngby (DK)

Representative:

Harrison IP Limited
3 Ebor House
Millfield Lane
Nether Poppleton, York YO26 6QY (GB)

Respondent:
(Patent Proprietor)

Akzo Nobel Coatings International B.V.
Velperweg 76
6824 BM Arnhem (NL)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 13 April 2018
rejecting the opposition filed against European
patent No. 2563866 pursuant to
Article 101(2) EPC**

Composition of the Board:

Chairman M. O. Müller
Members: P. O'Sullivan
 M. Blasi

Summary of Facts and Submissions

- I. The appeal of the opponents (appellants) lies from the decision of the opposition division according to which the opposition against European patent 2 563 866 was rejected.
- II. With the reply to the statement of grounds of appeal, the patent proprietor (respondent) requested dismissal of the appeal implying rejection of the opposition and maintenance of the patent as granted, or alternatively maintenance of the patent in amended form on the basis of one of the sets of claims of auxiliary requests 1, 2 or 3 filed therewith.
- III. With letter dated 18 February 2021 the respondent stated the following:

"... Proprietor/Respondent no longer approves the text in which the above-mentioned patent was granted."

With subsequent letter dated 24 February 2021 the respondent stated the following:

"... we herewith confirm that our withdrawal of approval of the text in which the above-mentioned patent was granted, extends to all pending claim requests."

Reasons for the Decision

1. The appeal is admissible.
2. 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 must also be observed in opposition and opposition appeal proceedings.
3. The respondent, by withdrawing approval of the text of the granted patent and all pending auxiliary requests, has thereby withdrawn its approval of any text on which maintenance of the patent may be based. 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. There is therefore no text on the basis of which the board can maintain the patent.
4. In view of the above, the board concludes that the patent must be revoked without further substantive examination as to patentability. This conclusion is also in line with established jurisprudence following decision T 73/84, OJ 1985, 241 (see also Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, section IV.D.2). No other issues are remaining within the scope of the present appeal.
5. As revocation of the patent complies with the requests of the parties, the present decision can be taken without holding oral proceedings.

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