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**Datasheet for the decision
of 2 August 2019**

Case Number: T 2318/18 - 3.3.03

Application Number: 08252313.5

Publication Number: 2031015

IPC: C08K3/04, C09C1/48

Language of the proceedings: EN

Title of invention:

Rubber composite and tire using the same

Patent Proprietor:

Bridgestone Corporation

Opponent:

Cabot Corporation

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Basis of decision - text or agreement to text withdrawn by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, T 0186/84



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2318/18 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 2 August 2019

Appellant: Cabot Corporation
(Opponent) Two Seaport Lane
Suite 1300
Boston
MA 02210-2019 (US)

Representative: Grünecker Patent- und Rechtsanwälte
PartG mbB
Leopoldstraße 4
80802 München (DE)

Respondent: Bridgestone Corporation
(Patent Proprietor) 10-1, Kyobashi 1-chome,
Chuo-ku
Tokyo 104-8340 (JP)

Representative: Lang, Johannes
Bardehle Pagenberg Partnerschaft mbB
Patentanwälte, Rechtsanwälte
Prinzregentenplatz 7
81675 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 July 2018
rejecting the opposition filed against European
patent No. 2031015 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman D. Semino
Members: O. Dury
 R. Cramer

Summary of Facts and Submissions

- I. The appeal by the opponent (appellant) lies against the decision of the opposition division posted on 2 July 2018 rejecting the opposition filed against European patent No. 2 031 015.
- II. In its statement setting out the grounds of appeal filed on 12 November 2018, the opponent (appellant) requested that the decision of the opposition division be set aside and the patent be revoked in its entirety.
- III. The patent proprietor (respondent) did not reply to that statement of grounds of appeal within the deadline set in Article 12(1)(b) RPBA.
- IV. With letter of 3 June 2019 the parties were summoned to oral proceedings.
- V. With a letter of 26 June 2019 the respondent stated:

"The patent proprietor does no longer approve the text of the opposed patent in which it is granted and will not submit an amended text".
- VI. Following that letter the oral proceedings were cancelled.

Reasons for the Decision

1. Under the provisions of Article 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted to it or agreed by the proprietor of the patent.
2. In the present case the respondent/patent proprietor unambiguously indicated in his letter dated 26 June 2019 that he withdrew his approval of the text in which the patent had been maintained by the decision of the opposition division and expressed his disapproval of any amended version of the text. Therefore, agreement by the patent proprietor pursuant to Article 113(2) EPC cannot be held to be given.
3. Under such circumstances, a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see e.g. decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. European patent No. EP 2 031 015 is revoked.

The Registrar:

The Chairman:



B. ter Heijden

D. Semino

Decision electronically authenticated