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Datasheet for the decision of 23 November 2021

Case Number: T 2405/18 - 3.3.02

Application Number: 10736166.9

Publication Number: 2391447

IPC: C07D301/10, B01J23/54, B01J23/89, B01J29/068, B01J35/10, B01J23/68

Language of the proceedings: EN

Title of invention:
ETHYLENE OXIDE CATALYST WITH OPTIMIZED CESIUM CONTENT

Patent Proprietor:
Scientific Design Company Inc.

Opponents:
Shell Internationale Research Maatschappij B.V.
BASF SE

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor / revocation requested by patent proprietor - patent revoked

Decisions cited:
T 0073/84, T 2405/12

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2405/18 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 23 November 2021

Appellant: (Opponent 1)	Shell Internationale Research Maatschappij B.V. Carel van Bylandtlaan 30 2596 HR The Hague (NL)
Representative:	Shell Legal Services IP p/a Carel van Bylandtlaan 16 2596 HR Den Haag (NL)
Respondent: (Patent Proprietor)	Scientific Design Company Inc. 49 Industrial Avenue Little Ferry New Jersey 07643-1901 (US)
Representative:	Hoefer & Partner Patentanwälte mbB Pilgersheimer Straße 20 81543 München (DE)
Party as of right: (Opponent 2)	BASF SE Carl-Bosch-Str. 38 67056 Ludwigshafen am Rhein (DE)
Representative:	Altmann Stößel Dick Patentanwälte PartG mbB Isartorplatz 1 80331 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 30 July 2018 concerning maintenance of the European Patent No. 2391447 in amended form.**

Composition of the Board:

Chairman	M. O. Müller
Members:	A. Lenzen
	C. Almberg

Summary of Facts and Submissions

I. This decision concerns the appeal filed by opponent 1 (appellant) against the interlocutory decision of the opposition division (decision under appeal) according to which European patent No. 2 391 447 (patent in suit) in amended form meets the requirements of the EPC.

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

II. In preparation for the oral proceedings on 9 December 2021 the board issued a communication pursuant to Article 15(1) RPBA 2020.

III. In its letter dated 19 November 2021, the patent proprietor (respondent) stated:

"*Patentee herewith withdraws (1) the Main Request and the Auxiliary Request on file and (2) the approval of the text upon which the patent was granted or any other form of the patent. Thus, revocation of the patent is requested (Part D, Chapter VIII, 1.2.5 of the Guidelines for Examination).*
The request for oral proceedings is also explicitly withdrawn so that the oral proceedings on December 9, 2021 are void."

IV. The board then cancelled the oral proceedings.

V. Opponent 2 had not filed any requests.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide 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 of the granted patent in suit and has withdrawn all pending claim requests. Therefore, there is no longer any text of the patent in suit in the proceedings on the basis of which the board can consider compliance with the requirements of the EPC. The respondent even clarified its intentions to the extent of expressly requesting that the patent in suit be revoked.

3. It is established case law that in the present circumstances the patent in suit must be revoked without further substantive examination(see e.g. T 2405/12 and T 73/84). The board has no reason to deviate from this consistent approach of the boards of appeal, and so the patent in suit is to be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent in suit is revoked.

The Registrar: The Chair:

N. Maslin M. O. Müller

Decision electronically authenticated