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**Datasheet for the decision
of 3 May 2023**

Case Number: T 2684/18 - 3.3.03

Application Number: 12845742.1

Publication Number: 2773710

IPC: C09D167/00, B65D1/26, C09D7/12,
B05D7/14

Language of the proceedings: EN

Title of invention:
COATING COMPOSITION FOR PACKAGING ARTICLES

Patent Proprietor:
SWIMC LLC

Opponent:
PPG Industries, Inc.

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Text or agreement to text withdrawn by patent proprietor -
appeal dismissed

Decisions cited:

T 0163/99, T 0053/03, T 1637/06, T 1244/08, T 0547/11,
T 1868/11, T 2524/12, T 0784/14, T 0454/15, T 1021/15,
T 1653/18, T 0436/20



Beschwerdekammern

Boards of Appeal

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Case Number: T 2684/18 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 3 May 2023

Appellant: SWIMC LLC
(Patent Proprietor) 101 West Prospect Avenue
Cleveland, Ohio 44115 (US)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Respondent: PPG Industries, Inc.
(Opponent) One PPG Place
Pittsburgh, Pa.15272 (US)

Representative: Appleyard Lees IP LLP
15 Clare Road
Halifax HX1 2HY (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 23 August 2018
revoking European patent No. 2773710 pursuant to
Article 101(3)(b) EPC.**

Composition of the Board:

Chairman D. Semino
Members: R. Cramer
M. Barrère

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division to revoke European Patent EP 2 773 710. The appellant requested that the decision under appeal be set aside, and the opposition be rejected, i.e. the patent be maintained as granted. In the alternative maintenance of the patent in amended form on the basis of one of auxiliary requests 1 to 20 (filed with the statement of grounds of appeal) was requested.
- II. In the reply to the statement of grounds of appeal the opponent (respondent) requested that the appeal be dismissed.
- III. On 10 February 2023 the Board issued a communication pursuant to Article 15(1) RPBA in preparation of the oral proceedings, scheduled to take place on 9 May 2023.
- IV. In a letter dated 19 April 2023 the appellant stated:
"Patentee herewith withdraws all pending Auxiliary Requests as well as his approval to the text intended for grant."

Reasons for the Decision

1. According to one line of board of appeal case law a declaration of the patent proprietor as sole appellant against a decision to revoke the patent that they no longer approve the text of the patent as granted and withdraw all further claim requests on file is equal to the withdrawal of their appeal. As examples the Board

refers to decisions T 0053/03, T 1244/08, T 0547/11, T 1868/11 and T 0436/20.

2. According to another line of case law such a declaration means that the appeal is to be rejected as there is no longer any text of the patent in the proceedings on the basis of which the board could consider the appeal (Article 113(2) EPC), with the result that the decision of the opposition division to revoke the patent becomes final. Examples of decisions that follow this line are T 163/99, T 1637/06, T 2524/12, T 784/14, T 454/15, T 1021/15 and T 1653/18.
3. The present Board agrees with the second approach. It is established case law that a request for withdrawal of an appeal should only be accepted without question if it is completely unqualified and unambiguous (Case Law of the Boards of Appeal, 10th edition 2022, V.A.7.3.5). If the patent proprietor, instead of withdrawing the appeal (which would involve a partial refund of the appeal fee), does not choose this path but declares a non-approval of the text of the patent in any form, this is in the view of the Board a deliberate choice and can thus not be interpreted as an unambiguous withdrawal of the appeal.
4. As it is nevertheless unambiguous from the declaration that the patent proprietor wishes the decision of the opposition division to revoke the patent to become final, a dismissal of the appeal is in line with this wish as well as with the opponent's request, and the Board can therefore decide to dismiss the appeal without holding oral proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Hampe

D. Semino

Decision electronically authenticated