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**Datasheet for the decision
of 28 February 2022**

Case Number: T 0320/19 - 3.3.02

Application Number: 07075456.9

Publication Number: 1820398

IPC: A01N43/80, A01N37/10, A01P1/00

Language of the proceedings: EN

Title of invention:
MICROBICIDAL COMPOSITION

Patent Proprietor:
Rohm and Haas Company

Opponent:
Thor GmbH

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text submitted or agreed by patent proprietor (no)

Decisions cited:

T 0073/84, T 0186/84, T 0798/90, T 0463/90, T 0014/99,
T 1844/17, T 3007/18

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0320/19 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 28 February 2022

Appellant: Thor GmbH
(Opponent) Landwehrstrasse 1
67346 Speyer (DE)

Respondent: Rohm and Haas Company
(Patent Proprietor) 100 Independence Mall West
Philadelphia, PA 19106-2399 (US)

Representative: Kent, Venetia Katherine
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1 King Street
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 6 December 2018
rejecting the opposition filed against European
patent No. 1820398 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: M. Maremonti
L. Bühler

Summary of Facts and Submissions

- I. The appeal by the opponent ("appellant") lies from the decision of the opposition division to reject the opposition against European patent No. 1 820 398 ("the patent").
- II. In its statement of grounds of appeal, the appellant requested that the appealed decision be set aside and that the patent be revoked.
- III. In its reply to the statement of grounds of appeal, the the patent proprietor requested that the appeal be dismissed and that the patent be maintained as granted (main request). Alternatively, it requested that the patent be maintained on the basis of the claims of one of auxiliary requests 1 to 6, auxiliary requests 1 to 4 having been filed before the opposition division on 8 November 2017 and auxiliary requests 5 and 6 having been filed with the reply to the statement of grounds of appeal.
- IV. The board summoned the parties to oral proceedings to be held on 5 April 2022.
- V. By letter dated 17 February 2022, the patent proprietor disapproved the text of the granted patent and withdrew all requests filed during the opposition and appeal proceedings, including all auxiliary requests and its request for oral proceedings.
- VI. By communication dated 23 February 2022, the board cancelled the oral proceedings.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Since the patent proprietor disapproved the text of the granted patent and withdrew all requests on file, including all auxiliary requests, there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the boards of appeal (see T 0073/84, OJ EPO 1985, page 241, T 0186/84, OJ EPO 1986, page 79, T 0798/90, T 0463/90, T 0014/99, T 1844/17, T 3007/18) that, under these circumstances, the patent is to be revoked without further substantive examination. There are also no ancillary issues that would have to be dealt with by the board in the present case.

Order

For these reasons it is decided that:

1. The appealed decision is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated