

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 27 July 2022**

Case Number: T 1233/19 - 3.3.03

Application Number: 12834391.0

Publication Number: 2758441

IPC: C08L23/08, C08F210/18, C08J5/18

Language of the proceedings: EN

Title of invention:
MODIFIED POLYETHYLENE COMPOSITIONS

Patent Proprietor:
ExxonMobil Chemical Patents Inc.

Opponent:
The Dow Chemical Company

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Basis of decision - text or agreement to text withdrawn by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

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1233/19 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 27 July 2022

Appellant: The Dow Chemical Company
(Opponent) 2030 Dow Center
Midland, MI 48674 (US)

Representative: Boulton Wade Tennant LLP
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP (GB)

Respondent: ExxonMobil Chemical Patents Inc.
(Patent Proprietor) 5200 Bayway Drive
Baytown, TX 77520 (US)

Representative: Uexküll & Stolberg
Partnerschaft von
Patent- und Rechtsanwälten mbB
Beselerstraße 4
22607 Hamburg (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 February 2019 concerning maintenance of the
European Patent No. 2758441 in amended form.**

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 from the interlocutory decision of the opposition division concerning maintenance of patent EP 2 758 441 in amended form according to the claims of the second auxiliary request (claims set E filed with letter of 22 November 2018) and a description adapted thereto.
- II. In their statement of grounds of appeal the appellant requested that the decision of the opposition division decision be set aside and the patent be revoked.
- III. In their rejoinder to the statement of grounds of appeal the patent proprietor (respondent) requested that the appeal be dismissed (main request) or, alternatively, that the patent be maintained in amended form according to any of the auxiliary requests filed therewith.
- IV. The parties were summoned to oral proceedings and a communication pursuant to Article 15(1) RPBA 2020 was issued by the Board.
- V. With letter of 20 July 2022 the respondent stated:

"The Proprietor no longer approves of the text in which European Patent No. 2 758 441 was granted, and of any amended text filed during the opposition and appeal proceedings".
- VI. With letter of 27 July 2022 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/proprietor unambiguously indicated in their letter dated 20 July 2022 that they withdrew their approval of the text in which the patent was granted and expressed their disapproval of any version of the text of the then pending requests. 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. 2 758 441 is revoked.

The Registrar:

The Chairman:



B. ter Heijden

D. Semino

Decision electronically authenticated