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**Datasheet for the decision
of 4 June 2021**

Case Number: T 1647/19 - 3.2.03

Application Number: 12173052.7

Publication Number: 2537610

IPC: B22D41/00

Language of the proceedings: EN

Title of invention:

Metal-flow impact pad and diffuser for tundish

Patent Proprietor:

IMERTECH SAS

Opponent:

Refractory Intellectual Property GmbH & Co. KG

Headword:

Relevant legal provisions:

EPC Art. 101, 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84, T 2405/12, T 0055/16

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1647/19 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 4 June 2021

Respondent: IMERTECH SAS
(Patent Proprietor) 43, quai de Grenelle
75015 Paris (FR)

Representative: Haseltine Lake Kempner LLP
Redcliff Quay
120 Redcliff Street
Bristol BS1 6HU (GB)

Appellant: Refractory Intellectual Property GmbH & Co. KG
(Opponent) Wienerbergstrasse 11
1100 Wien (AT)

Representative: Pacher, Peter
RHI AG
DIP - IP Management
Magnesitstraße 2
8700 Leoben (AT)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 April 2019 concerning maintenance of the
European Patent No. 2537610 in amended form.**

Composition of the Board:

Chairman C. Herberhold
Members: G. Patton
N. Obrovski

Summary of Facts and Submissions

- I. This decision concerns the appeals filed initially by the opponent and the patent proprietor against the decision of the opposition division finding that European patent EP 2 537 610 as amended meets the requirements of the EPC.

The patent proprietor withdrew their appeal with letter dated 7 August 2019.

- II. The opponent-appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety and further that the appeal fee be reimbursed.

- III. By letter dated 28 May 2021 the patent proprietor-respondent declared:

"The proprietor no longer approves the text in which the patent was granted. The proprietor withdraws all requests previously on file, and will not be submitting any further requests.

In view of the above, revocation of the patent is expected and oral proceedings should be cancelled."

By letter dated 1 June 2021 the patent proprietor-respondent further added:

"For the avoidance of any doubt, the withdrawal of all requests includes the withdrawal of the request for oral proceedings."

- IV. By letter dated 31 May 2021, the opponent-appellant stated that they waived reimbursement of the appeal fee if the contested patent was revoked in written proceedings and that the requests for oral proceedings and for reimbursement of appeal fee were maintained as auxiliary requests in case the contested patent was not revoked in written proceedings (*"Wenn das Patent im schriftlichen Verfahren widerrufen wird, so verzichtet die Einsprechende / Beschwerdeführerin auf die Rückzahlung der Beschwerdegebühr. Sollte das Patent nicht im schriftlichen Verfahren widerrufen werden, so bleiben hilfsweise alle bereits gestellten Anträge aufrecht, insbesondere der Antrag auf mündliche Verhandlung und auf Rückzahlung der Beschwerdegebühr."*)

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the patent proprietor-respondent - as in the present case - expressly states that they no longer approve the text of the patent as granted, withdraw all submitted requests, which includes the patent as upheld by the opposition division, and declare that they will not be submitting an amended text.
3. Where there is no text of the patent on which basis the board can consider the case of the patent proprietor-respondent, the only possibility available to the board is to revoke the patent as envisaged by Article 101 EPC. In this context reference is made to T 73/84 (OJ

EPO 1985, 241) as well as to T 2405/12 and T 55/16 (see also Case Law of the Boards of Appeal, 9th Edition 2019, III.B.3.3).

4. As the patent proprietor-respondent explicitly withdrew their request for oral proceedings, the present decision to revoke the patent is taken in written proceedings.

Thus, the conditions set by the opponent-appellant for waiving reimbursement of the appeal fee, respectively for not maintaining their auxiliary requests for oral proceedings and for reimbursement of the appeal fee are fulfilled (see point IV above).

As a result, the opponent-appellant's auxiliary requests are moot and the board does not need to deal with them.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



C. Spira

C. Herberhold

Decision electronically authenticated