

**Internal distribution code:**

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

**Datasheet for the decision  
of 24 November 2022**

**Case Number:** T 2170/19 - 3.3.03

**Application Number:** 06726688.2

**Publication Number:** 1866368

**IPC:** C08K7/02, B29B9/14, C08J5/04,  
C08G65/40, C08L71/00

**Language of the proceedings:** EN

**Title of invention:**  
POLYMERIC MATERIALS

**Patent Proprietor:**  
VICTREX MANUFACTURING LIMITED

**Opponents:**  
Evonik Operations GmbH

**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Basis of decision - text or agreement to text withdrawn by  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 2170/19 - 3.3.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 24 November 2022**

**Appellant:**  
(Opponent )

Evonik Operations GmbH  
Rellinghauserstrasse 1-11  
45128 Essen (DE)

**Representative:**

Godemeyer Blum Lenze Patentanwälte  
Partnerschaft mbB - werkpatent  
An den Gärten 7  
51491 Overath (DE)

**Respondent:**  
(Patent Proprietor)

VICTREX MANUFACTURING LIMITED  
Victrex Technology Centre,  
Hillhouse International  
Thornton Cleveleys  
Lancashire FY5 4QD (GB)

**Representative:**

Gurun, Lara  
Victrex Manufacturing Limited  
Intellectual Property Department  
Victrex Technology Centre  
Hillhouse International  
Thornton Cleveleys FY5 4QD (GB)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
3 June 2019 concerning maintenance of the  
European Patent No. 1866368 in amended form.**

**Composition of the Board:**

**Chairman**            D. Semino  
**Members:**            O. Dury  
                              C. Josefsson

## **Summary of Facts and Submissions**

- I. The appeal by the opponent (appellant) lies from the interlocutory decision of the opposition division concerning maintenance of European patent No. 1 866 368 in amended form according to the claims of the main request filed with letter of 1 November 2018 and an adapted description.
- 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 first to fifth auxiliary requests filed therewith.
- IV. The parties were summoned to oral proceedings and a communication pursuant to Article 15(1) RPBA 2020 was then issued by the Board.
- V. With letter of 22 November 2022 the respondent stated:  
  
"The proprietor hereby withdraws its approval of the text on which the European patent was granted and the text on which the European patent was maintained. The proprietor also withdraws all auxiliary requests and will not be filing a replacement text or any further requests.

Consequently, the proceedings are to be terminated by a

decision ordering the revocation of the patent without reference to any of the substantive issues".

- VI. With letter of 24 November 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 22 November 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. 1 866 368 is revoked.

The Registrar:

The Chairman:



D. Hampe

D. Semino

Decision electronically authenticated