

**Internal distribution code:**

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

**Datasheet for the decision  
of 13 November 2023**

**Case Number:** T 3107/19 - 3.3.10

**Application Number:** 09160311.8

**Publication Number:** 2085422

**IPC:** C09K5/04

**Language of the proceedings:** EN

**Title of invention:**

COMPOSITIONS CONTAINING FLUORINE SUBSTITUTED OLEFINS

**Patent Proprietor:**

Honeywell International Inc.

**Opponents:**

ARKEMA FRANCE  
Mexichem UK Limited

**Headword:**

**Relevant legal provisions:**

**Keyword:**

Appellant no longer approves the text of the patent

**Decisions cited:**

T 0073/84

**Catchword:**



**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 3107/19 - 3.3.10

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.10**  
**of 13 November 2023**

**Appellant:** Honeywell International Inc.  
(Patent Proprietor) 115 Tabor Road  
Morris Plains, NJ 07950 (US)

**Representative:** Crooks, Elizabeth Caroline  
Kilburn & Strode LLP  
Lacon London  
84 Theobalds Road  
London WC1X 8NL (GB)

**Appellant:** ARKEMA FRANCE  
(Opponent 1) 420, Rue d'Estienne d'Orves  
92700 Colombes (FR)

**Representative:** Arkema Patent  
Arkema France  
DRD-DPI  
420, rue d'Estienne d'Orves  
92705 Colombes Cedex (FR)

**Party as of right:** Mexichem UK Limited  
(Opponent 2) The Heath Business & Technical Park  
Runcorn  
Cheshire WA7 4QX (GB)

**Representative:** Potter Clarkson  
Chapel Quarter  
Mount Street  
Nottingham NG1 6HQ (GB)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
5 November 2019 concerning maintenance of the  
European Patent No. 2085422 in amended form.

**Composition of the Board:**

<b>Chair</b>	P. Gryczka
<b>Members:</b>	R. Pérez Carlón
	F. Blumer

## **Summary of Facts and Submissions**

- I. Both the patent proprietor and the opponent 1 appealed the opposition division's decision on the maintenance of the patent in the form of the third auxiliary request before it.
- II. An intervention was filed and subsequently withdrawn.
- III. The parties were summoned to oral proceedings.
- IV. With a letter dated 10 November 2023 the appellant-patent proprietor stated that it no longer approved of the text upon which the above patent was granted and unconditionally withdrew the patent with immediate effect. It also withdrew its request for oral proceedings.
- V. The oral proceedings were cancelled.

## **Reasons for the Decision**

1. The appeals are admissible.
2. During the present appeal proceedings, the appellant-patent proprietor withdrew its approval of the text of the patent as granted and unconditionally withdrew the patent.
3. Under Article 113(2) EPC, the European Patent Office must consider a European patent only in the text submitted to it, or agreed by the proprietor of the patent. There is, however, no text of the patent on the basis of which the board can consider this appeal.

4. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will.

If a patent proprietor withdraws its approval of the text of the patent as granted and of the text in which the patent was maintained and withdraws every other request on file, and requests revocation of the patent in suit it wishes to prevent any text whatever of the patent from being maintained.

5. In the case underlying T 73/84 (Headnote and Reasons), the board decided that if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted and did not submit any amended text, the patent was to be revoked. This approach was confirmed, among others, by decisions T 186/84, T 655/01, T 1526/06 and T 2405/12.
6. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out in the above-mentioned decisions. The patent must therefore be revoked without going into any substantive issue.

## **Order**

### **For these reasons it is decided that:**

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chair:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated