

**Internal distribution code:**

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

**Datasheet for the decision  
of 1 February 2022**

**Case Number:** T 0929/21 - 3.2.01

**Application Number:** 08172709.1

**Publication Number:** 2075083

**IPC:** B23K35/28, B23K35/14, B23K1/19,  
B32B15/01, C22C21/00,  
C22C21/02, C22C21/10,  
F28F21/08, B23K103/10

**Language of the proceedings:** EN

**Title of invention:**  
Brazing sheet of aluminium alloy

**Patent Proprietor:**  
Kabushiki Kaisha Kobe Seiko Sho (Kobe Steel, Ltd.)

**Opponents:**  
Gränges AB  
Speira GmbH

**Headword:**

**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Basis of decision - text or agreement to text withdrawn by  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 0534/01, T 0054/03, T 0013/05

**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 0929/21 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 1 February 2022**

**Appellant:** Speira GmbH  
(Opponent 2) Aluminiumstrasse 1  
41515 Grevenbroich (DE)

**Representative:** Cohausz & Florack  
Patent- & Rechtsanwälte  
Partnerschaftsgesellschaft mbB  
Bleichstraße 14  
40211 Düsseldorf (DE)

**Respondent:** Kabushiki Kaisha Kobe Seiko Sho (Kobe Steel,  
(Patent Proprietor) Ltd.)  
10-26, Wakinohama-cho 2-chome,  
Chuo-ku  
Kobe-shi,  
Hyogo 651-8585 (JP)

**Representative:** Elkington and Fife LLP  
Prospect House  
8 Pembroke Road  
Sevenoaks, Kent TN13 1XR (GB)

**Party as of right:** Gränges AB  
(Opponent 1) Linnégatan 18  
Box 5505  
114 85 Stockholm (SE)

**Representative:** Valea AB  
Box 1098  
405 23 Göteborg (SE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 14 April 2021  
rejecting the opposition filed against European**

patent No. 2075083 pursuant to Article 101(2)  
EPC.

**Composition of the Board:**

<b>Chairman</b>	G. Pricolo
<b>Members:</b>	V. Vinci
	P. Guntz

## **Summary of Facts and Submissions**

- I. The appeal filed by the appellant (opponent 2) is directed against the interlocutory decision of the opposition division to reject the oppositions filed against the European patent No. 2 075 083.
  
- II. The appellant (opponent 2) requested to set aside the decision of the opposition division and to revoke the patent in its entirety, as an auxiliary measure to appoint oral proceedings pursuant to Article 116 EPC.

The patent proprietor (respondent) did not reply to the statement of the grounds of appeal and, with a letter dated 30 November 2021, withdrew their approval to the text in which the patent was granted (and upheld by the opposition division) together with all the other requests on file, and stated that they did not intend to submit any other text for the maintenance of the patent.

## **Reasons for the Decision**

1. According to Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. In the present case the respondent (patent proprietor) explicitly disapproved all texts for the patent, withdrew all requests on file and declared that they will not be submitting an amended text. Therefore, there is no text of the patent on the basis of which the Board can consider the appeal.

- 1.1 From the letter dated 30 November 2021 the Board infers that the respondent (patent proprietor) wishes to prevent any text whatever of the patent from being maintained.
- 1.2 Since the text of the patent is at the disposition of the patent proprietor and a patent cannot be maintained against the proprietor's will, the contested patent can only be revoked without going into the substantive issues, thereby confirming the established jurisprudence of the Boards of Appeal (see e.g. T0073/84, T 0534/01, T0054/03 or T0013/05).

## Order

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

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

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated