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**Datasheet for the decision
of 26 September 2022**

Case Number: T 1121/21 - 3.3.03

Application Number: 06749347.8

Publication Number: 1951803

IPC: C08K9/04, C09C3/08, C08J3/20

Language of the proceedings: EN

Title of invention:
TREATED FILLER AND PROCESS FOR PRODUCING

Patent Proprietor:
PPG Industries Ohio, Inc.

Opponent:
Evonik Operations GmbH

Relevant legal provisions:
EPC Art. 99, 113
EPC R. 76(2)(a), 77

Keyword:
Substantial procedural violation (no)
Admissibility of opposition - (yes)
Opponent identifiable

Decisions cited:

G 0003/99, G 0001/12, T 0025/85, T 0615/14, T 0579/16



Beschwerdekammern

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Case Number: T 1121/21 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 26 September 2022

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

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

Respondent: PPG Industries Ohio, Inc.
(Patent Proprietor) 3800 West 143rd Street
Cleveland, OH 44111 (US)

Representative: f & e patent
Braunsberger Feld 29
51429 Bergisch Gladbach (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 23 June 2021
rejecting the opposition against European patent
No. 1951803 as inadmissible under Rule 77(1) EPC**

Composition of the Board:

Chairman D. Semino
Members: A. Bacchin
M. Barrère

Summary of Facts and Submissions

I. The appeal of the opponent lies from the decision of the opposition division rejecting the opposition as inadmissible pursuant to Rule 77(1) EPC on the ground that it was not established before the expiry of the nine-month time limit for opposition who was the person of the opponent.

II. An opposition against European patent No. 1 951 803 was filed electronically on 29 May 2019. The notice of opposition was accompanied by a cover letter ("Begleitschreiben", referred to as accompanying letter in what follows). EPO Form 2300 was not used.

The notice of opposition was signed by Dr. Frank Foster, Evonik Patent Association, Registration number 936. The text of the letter did not expressly indicate the name of the opponent but the wording "we file an opposition" ("... legen wir ... Einspruch ein") was used. The opposition letter indicated twice (header and footer) the name of Evonik Degussa GmbH, albeit with different addresses. A logo of Evonik Industries was present on the top right of the letter from page 2.

In the accompanying letter the Evonik Patent Association was referred to as representative ("Vertreter") and Dr. Frank Forster was indicated in the box of the represented party. The accompanying letter contained the order to debit the opposition fee from the deposit account of Evonik Industries AG.

III. With a communication dated 6 June 2019 (Form 2316) the EPO informed the proprietor about the filing of a notice of opposition and indicated, at the bottom of

the communication, that the opponent was Evonik Degussa GmbH.

- IV. With a communication dated 11 June 2019 the EPO invited the opponent, in accordance with Rules 77(2) and 76(2) (a) EPC, to remedy deficiencies in the notice of opposition concerning the name, the address, the state of residence or principal place of business and the nationality of the opponent. A time limit of two months from notification of the communication was given, with the indication that if the deficiencies were not remedied in good time, the notice of opposition would be rejected by the opposition division as inadmissible (Rule 77(2) EPC).
- V. By further communication pursuant to Rule 79(1) EPC dated 27 June 2019 (Form 2317A), the EPO informed the proprietor that a notice of opposition had been filed within the opposition period by "Evonik Degussa GmbH, Rellinghauserstrasse 1-11, 45128 Essen ALLEMAGNE". A time limit for filing observations was set.
- VI. With letter of 4 July 2019 the appointed representative, Dr. Frank Forster, clarified that the opposition had been filed in the name of "Evonik Degussa GmbH, Rellinghauserstrasse 1-11, 45128 Essen DEUTSCHLAND, Nationalität: Deutsch".
- VII. With letter of 7 January 2020 the proprietor filed a response "to the opposition filed by Evonik Degussa GmbH", in which the rejection of the opposition was requested or, in the alternative, maintenance of the patent on the basis of any of auxiliary requests 1 to 33. An objection as to the admittance of the opposition was not raised at that stage.

- VIII. The parties were summoned to oral proceedings before the opposition division with a communication dated 28 May 2020, in which a preliminary non-binding opinion on substantive issues was provided. Both parties filed further submissions in reply to the opposition division's preliminary opinion.
- IX. By letter dated 20 April 2021, one day before the scheduled oral proceedings, the proprietor complained for not having been informed that the opponent had appointed "Godemeyer Blum Lenze Patentanwälte Partnerschaft mbB" as representative. A conflict of interest existed in violation of Article 3(2) of the Regulation on discipline for professional representatives, since all professionals of that association had represented the proprietor in examination proceedings. Oral proceedings had to be postponed in order to allow the parties to solve this conflict.
- X. At the oral proceedings on 21 April 2021 the opposition division decided to adjourn the oral proceedings, with the agreement of the parties, and reconvene on 10 June 2021.
- XI. The parties were summoned to oral proceedings with a communication dated 29 April 2021, in which a further preliminary opinion of the opposition division was given. Both parties replied to the summons.
- XII. With the reply letter of 7 May 2021 the proprietor raised for the first time the objection that the person of the opponent could not be unequivocally identified within the nine month opposition period. This inconsistency was found when looking for evidence in the file for the change of name of the opponent from

Evonik Degussa GmbH in Evonik Operations GmbH. The opposition was thus inadmissible.

- XIII. With the reply letter of 31 May 2021 the opponent provided arguments in support of admissibility of the opposition and of the fact that Evonik Degussa GmbH was the opponent in the present case. Specific evidence of the change of name from Evonik Degussa GmbH to Evonik Operations GmbH was provided.
- XIV. According to the reasons for the contested decision, which are pertinent for the appeal proceedings, it was first found that an objection as to the admissibility of an opposition can be raised at any stage of the proceedings. Thus, even if late filed, the proprietor's objection was admitted into the proceedings. Due to the inconsistencies in the opposition accompanying letter and between this accompanying letter and the actual letter of opposition there were doubts as to the identity of the opponent, so that this person could either be Evonik Industries AG or Evonik Degussa GmbH. As the opponent's identity was neither established nor corrected, in the sense of decision G 1/12, before the expiry of the nine-month time limit for opposition, the opposition was rejected as inadmissible pursuant to Rule 77(1) EPC.
- XV. Against the decision of the opposition division the opponent (appellant) filed an appeal on 15 July 2021. A reply to the statement of grounds of appeal was provided by the proprietor (respondent) on 23 February 2022.
- XVI. A summons to oral proceedings before the board was issued on 13 April 2022.

- XVII. In a communication in accordance with Article 15(1) RPBA issued on 20 July 2022, the parties were informed that the board was inclined to consider the opposition as admissible. The board further expressed its preliminary opinion that according to the available submissions, no violation of the appellant's right to be heard by the opposition division could be established, so that the request for reimbursement of the appeal fee was likely to be rejected. Finally the parties were informed that if the appeal was to be allowed and the appealed decision to be set aside, the case would have to be remitted to the opposition division for further prosecution.
- XVIII. Oral proceedings before the board were held by videoconference on 26 September 2022, to which both parties participated.
- XIX. The appellant (opponent) requested that the decision under appeal be set aside and that the appeal fee be refunded, due to a substantial procedural violation by the opposition division. Additionally the appellant requested that the decision under appeal be set aside, that the opposition be declared admissible and that the case be remitted to the opposition division for further prosecution.
- XX. The respondent (patent proprietor) requested that the appeal be dismissed.
- XXI. The parties' arguments as far as they are pertinent to the present decision are as follows:
- (a) *Substantial procedural violation*
- (i) Appellant:

The opposition division committed a substantial procedural violation as the decision on the inadmissibility of the opposition came as a surprise to the appellant. For this reason the appeal fee had to be reimbursed.

(ii) Respondent:

At the oral proceedings before the opposition division both parties had the opportunity to present all their arguments both with regard to the admittance of the objection against admissibility of the opposition and with regard to the admissibility of the opposition as such. Nothing could have led the opponent to believe that the admissibility of the opposition would have been further discussed when the oral proceedings were interrupted for deliberation. The opponent did not indicate which further arguments concerning the admissibility of the opposition they were not allowed to present. There was thus no element to infer that the opponent's right to be heard was violated by the opposition division.

(b) *Admissibility of the opposition*

(i) Appellant:

The content of the accompanying letter was subordinate to the one of the notice of opposition. On account of the whole notice of opposition it resulted that the opponent was Evonik Degussa GmbH. The fact that the opposition fee was paid from the deposit account of the Evonik Industries AG could not, as such, constitute an indication of the identity of the opponent. Indeed the name of Evonik Industries AG did not appear at all in

the opposition letter. In the accompanying letter the indication of Dr. Frank Forster as represented party was clearly a mistake.

The correspondence from the EPO, both before expiry of the opposition period and after (see in particular EPO communications of 6 June 2019 and of 27 June 2019), confirmed that the Office identified the opponent as Evonik Degussa GmbH. It was therefore not clear on which basis the communication inviting to remedy deficiencies in the notice of opposition was sent. Neither the respondent nor the opposition division objected to the admissibility of the opposition until 7 May 2021. Thus in application of the principle of protection of good faith the opposition's admissibility could not be questioned.

The correspondence from the respondent during opposition also confirmed the clear understanding that the opponent was Evonik Degussa GmbH. This was surprisingly contested only shortly before the oral proceedings.

The appellant's reply to the invitation to correct deficiencies in the notice of opposition on 4 July 2019 should be understood as an implicit request for correction according to Rule 139 EPC. As a precautionary measure, a request for correction was filed with the statement of grounds of appeal as it had been the clear intention since the outset of the proceedings to file the opposition in the name of Evonik Degussa GmbH. This intention was further supported by the fact that all oppositions of the Evonik group in that technical field were filed in the name of Evonik Degussa GmbH. Particular reference was made to decisions T 168/14 [*sic*] and T 615/14, in which

the opposition was declared inadmissible because two different companies were named as opponents in the notice of opposition. In the present case only one company was actually referred to as opponent, namely Evonik Degussa GmbH. For these reasons the appealed decision was to be set aside and the opposition be declared admissible.

(ii) Respondent:

The opposition division was correct in considering that the identity of the opponent was not clearly identified before expiry of the time limit for opposition. The eight facts listed at page 8 of the decision of the opposition division, according to which either Evonik Industries AG or Evonik Degussa GmbH could be considered the opponent, were not rebutted by the appellant in the statement of grounds of appeal. From the notice of opposition it could be assumed that the opponent was Evonik Industries AG, both on account of the logo present from the second page and from the sentence "We will be paying the required opposition fee from our account 28000336" (*"Die erforderliche Einspruchsgebühr werden wir online von unserem Konto 28000336 abbuchen"*), since the deposit account belonged to this company. Moreover, the address of the representative association, the "Evonik Patent Association", indicated in the accompanying letter ("c/o Evonik Industries AG, IP Management" in Marl) would also contribute to the understanding that the Evonik Patent Association might act on behalf of the Evonik Industries AG.

The correspondence from the EPO was irrelevant to the question of admissibility of the opposition. The letter of 6 June 2019 (Form 2316), with which the proprietor

was informed of the filing of an opposition, was issued before formal examination of the notice of opposition. The formalities officer's formal assessment of the notice of opposition was not correct, so that the indication of the opponent in the letter of 27 June 2019 was wrong. In any case such assessment could be overturned even later in the proceedings as the admissibility of the opposition can be examined at any stage in the proceedings. For this reason the communications from the EPO could not provide a basis for the protection of good faith (see also T 25/85, Reasons 13). The same was valid for the correspondence of the proprietor.

A request for correction must comply with the requirements set in decision G 1/12. In the present case neither the appellant's letter of 4 July 2019 nor the statement of grounds of appeal met those requirements, since the request was either not filed without delay or the necessary evidence was missing, i.e. that it was the original intention to file the opposition in the name of Evonik Degussa GmbH. Thus the request for correction was both inadmissible and unfounded and the appeal was to be dismissed.

Reasons for the Decision

1. The sole object of the present decision is the question of admissibility of the opposition in accordance with Article 99 and Rule 77 EPC.
2. The board has come to the conclusion that the identity of the opponent as Evonik Degussa GmbH could be sufficiently established at the expiry of the opposition period. Accordingly there was no need to

address the request for correction of an error in accordance with Rule 139 EPC and decision G 1/12 (OJ EPO 2014, A114).

(a) *Substantial procedural violation*

3. The appellant submitted that a substantial procedural violation was committed by the opposition division when it decided to declare the opposition inadmissible. As the objection to admissibility of the opposition was raised by the respondent for the first time with letter dated 7 May 2021, the appellant requested not to admit this new objection into the opposition proceedings. The appellant had thus expected first a decision on the admittance of the late filed objection of inadmissibility of the opposition and then a discussion on the substance of the objection. This sequence was reflected also in points 1. and 2. of the minutes of the oral proceedings. The decision that the opposition was inadmissible was announced immediately after the first interruption of the oral proceedings for deliberation of the opposition division, thus leaving no possibility for the appellant to present their submissions as to the substance of the admissibility of the opposition. This decision came as a surprise for the appellant, thereby violating their right to be heard. Already for this reason, the appealed decision should be set aside and the appeal fee reimbursed.
4. The board does not agree with the appellant's arguments.
 - 4.1 The fundamental principle of the right to be heard enshrined in Article 113(1) EPC, to the extent that it encompasses also the protection of good faith and the right to a fair hearing, is violated if at the time

when the decision is issued a party had no reasons to expect such a decision and no possibility to provide their arguments. This principle is meant to ensure that no party is caught unaware by reasons given in a decision.

4.2 The minutes of the oral proceedings, together with the appealed decision, represent for a board of appeal the only possibility to understand what objectively happened during the oral proceedings before a department of first instance, for the simple fact that a board is not present at such oral proceedings. Subjective expectations or surprises as to the developments of proceedings cannot be taken into account, if they are not backed up by concrete details. In the absence of evidence to the contrary thus the board has to rely on the assumption that the minutes of the oral proceedings correctly reflect the actual course of the oral proceedings.

4.3 In the board's view it cannot be said that in the present case the parties, in particular the then opponent, were not given the possibility to provide their arguments as to admissibility of the opposition, nor that they objectively had no reasons to expect a decision of the opposition division on this point at that stage of the oral proceedings. The board rather agrees with the respondent's submissions that according to the minutes of the oral proceedings (points 2., 3., 4. and 5.) it objectively results that both parties had the opportunity to fully submit all facts and arguments, including those related to the substance of the admissibility of the opposition, before deliberation of the opposition division. The facts and arguments provided by each party on the substance of the objection are reported in details in the minutes

(in particular points 3., 4. and 5.). On the contrary, there is no indication in the minutes that the then opponent was surprised after the opposition division took the decision on the inadmissibility of the opposition, nor that they expected only a decision on the admissibility of the corresponding objection. The appellant has also never indicated which further arguments they would have intended to submit in relation to the admissibility of the opposition. The decision of the opposition division provides reasons both for the admissibility of the objection and for its merits, taking into account all arguments presented by the parties. The decision is therefore consistent with the content of the minutes.

- 4.4 Thus, the board fails to see any element to consider that the appellant's right to be heard in this respect was violated. In the absence of a substantial procedural violation, the request of reimbursement of the appeal fee is to be rejected.

(b) Admissibility of the opposition

5. Since the decision under appeal cannot be set aside for reasons of a substantial procedural violation, the question of admissibility of the opposition must be examined.
6. The opposition division rejected the opposition as inadmissible pursuant to Rule 77(1) EPC, as the person of the opponent was considered not to have been established before the expiry of the opposition period. The opposition division based its findings on an apparent lack of a clear indication of the opponent in the notice of opposition and in the accompanying letter, so that this person could either be *Evonik*

Industries AG or *Evonik Degussa GmbH*. The opposition division also rejected the request for correction of the identity of the opponent under Rule 139 EPC because no supporting evidence as to the "true person" of the opponent was filed.

7. In addition the respondent submitted that there were elements to consider also *Dr. Frank Forster* of *Evonik Patent Association*, as the opponent.
8. Thus the question at stake is whether on the basis of the information provided in the notice of opposition and in the accompanying letter (see point II. above) at the expiry of the opposition period there could be justified doubts that the person of the opponent could be *Evonik Industries AG* or *Dr. Frank Forster* rather than *Evonik Degussa GmbH*.
9. The board preliminary considers that the question of admissibility of an opposition can be assessed at any stage of the proceedings. Thus the appellant's argument that, in application of the principle of protection of good faith, admissibility of an opposition cannot be questioned at a late stage in the proceedings does not stand (see also T 25/85, OJ EPO 1986, 81, Reasons 13.).
10. For the reasons which follow the board does not share the conclusions in the appealed decision and the corresponding arguments submitted by the respondent. The board considers that the indication of the opponent as *Evonik Degussa GmbH*, given in the notice of opposition, does not fairly allow room for speculation that the identity of the opponent could be somebody else, particularly *Evonik Industries AG* or *Dr. Frank Forster*. The deficiency regarding the different

addresses of the opponent was also duly remedied in accordance with Rule 77(2) EPC.

11. Under the EPC the opponent has to be determined before expiry of the time limit for opposition, since only then it could be a party to the opposition proceedings in accordance with Article 99(3) EPC (see G 3/99, OJ EPO 2002, 347, point 12. of the reasons and T 25/85, point 6. of the reasons). In particular, under Article 99 EPC and Rule 76(2) (a) EPC, in conjunction with Rule 41(2) (c) EPC, the notice of opposition must contain the name, address and nationality of the opponent and the state where its residence or principal place of business is located. Furthermore, the identity of the opponent must be clear from the notice of opposition, without having to speculate as to the true identity of the opponent.

A distinction is made between the identity of the opponent, which must be known from the outset of the proceedings, and deficiencies or omissions in the name or the address of the opponent, which may be remedied within a period to be specified by the opposition division in accordance with Rule 77(2) EPC. The board also notes, for the sake of completeness, that an incorrect designation of the opponent in the notice of opposition may be corrected under Rule 139 EPC, provided that it complies with the principles endorsed in G 1/12. Appropriate evidence establishing the original intention at the time of filing the opposition can also be submitted after expiry of the opposition period (e.g. T 615/14 of 27 October 2015, Reasons 1.2 to 1.5 and 1.7).

12. In application of these principles, the board first notes that the letter of opposition clearly identifies

in the header and in the footer one single legal person, namely Evonik Degussa GmbH, albeit with different addresses. The letter is signed by Dr. Frank Forster from Evonik Patent Association, registration number 936 and his name, including contact data and the further responsibilities (Legal, IP Management & Compliance IP Management), are indicated on the top right side of the letter. The body of the letter refers to "we" ("wir"), without any further specification.

13. Based on this information, the board cannot identify in the opposition letter any concrete indication that the opposition could have been filed by Evonik Industries AG, as suggested in the appealed decision and by the respondent, already for the fact that this company is not mentioned at all in this letter.

14. The opposition division found a basis for its assumption in the *logo*, mentioning "Evonik Industries", on the top of pages 2 to 13 of the letter of opposition. In this respect the board observes that a logo is merely a graphical symbol, often present on letterheads, designed to communicate quickly the corporate identity. Due to its function, its generic presence on official papers and its typical symbolic representation, a logo alone cannot certainly be a sufficient legal identification of a company for the purposes of Rule 76(2)(a) EPC. This is particularly valid in the present case, where the logo "Evonik Industries" does not even correspond to the company name at least because the specification "AG" is missing. The board thus finds that in the presence of a more specific and complete indication of a company on a letter, as in this case the one of Evonik Degussa GmbH and the corresponding addresses, a general corporate logo of the company group in said letter does not

fairly allow room for doubting that the letter actually originates from the company specifically identified. The argument based on a general logo thus remains a pure speculation that Evonik Industries AG could be regarded as the opponent.

15. The respondent has further based the argument that Evonik Industries AG was the true opponent, represented by Dr. Forster, on the sentence in the notice of opposition "We will be paying the required opposition fee from our account 28000336" (*"Die erforderliche Einspruchsgebühr werden wir online von unserem Konto 28000336 abbuchen"*), together with the fact that, as specified in the accompanying letter, the deposit account was owned by Evonik Industries AG.

15.1 The board cannot follow this argument either. Despite the inaccurate use of the pronouns "we" and "our", this sentence cannot be interpreted as meaning that Evonik Industries AG was the opponent, simply because the company owned the deposit account. As stated above, the Evonik Industries AG is nowhere mentioned in the letter of opposition, so that the "we" cannot be implicitly referred to this company. Further, Dr. Forster could not be identified with Evonik Industries AG under the use of "we", as suggested by the respondent, both because he did not co-own the deposit account no. 28000336 and because he was clearly acting as professional representative rather than as an employee representing the employer under Article 133(3) EPC. This fact has also been acknowledged by the respondent (see page 5, second paragraph of the reply to the statement of grounds of appeal).

15.2 The board rather follows the appellant's argument according to which it is general practice to use a

common deposit account in a group of companies, so that the wording used in the letter of opposition cannot be unreasonably misinterpreted to mean anything else than the act of paying the opposition fee from the account used by the company group.

15.3 With regard to the opposition division's findings that the indication in the accompanying letter of Evonik Industries AG as the owner of the deposit account by which the opposition fee was paid could support that the latter was the true opponent, the board actually shares the appellant's view that this fact, alone, is completely irrelevant to the question of the identification of the opponent. It is a generally accepted principle that in proceedings before the EPO fees can be paid by any third person. Accordingly, the person responsible for paying fees does not necessarily need to be a party to the proceedings. Thus, also the fact that fees were paid by another company within the Evonik group is not sufficient to raise reasonable doubts as to the identity of the party to the proceedings.

15.4 The opposition division further considered the fact that in the accompanying letter the address of Evonik Patent Association was indicated as "c/o Evonik Industries AG" as a support of the assumption that the opponent was Evonik Industries AG. Again, the board has difficulties in following how a mere indication of the postal address of the association of representatives, Evonik Patent Association, may have an objective bearing on the identification of the opponent that they represent. It is rather common that the internal representative association of a big company group has its seat at one of those companies, particularly the mother entity.

16. Therefore, in the absence on any concrete mentioning of Evonik Industries AG in the relevant documents, except for the accompanying letter as owner of the deposit account and in the "c/o" address of the association of representative, the board does not find any reasonable support for the assumption that Evonik Industries AG could be the opponent in the present case.

17. The board is not convinced by the argument that Dr. Frank Forster could be considered as the opponent either. Dr. Forster signed the letter of opposition as member of the representatives' association Evonik Patent Association and in the text the use of the plural form "wir" is used, instead of the singular "ich", as it would have been the case if he intended to act as the opponent. In the board's view the fact that his name, contact data and the further responsibilities (Legal, IP Management & Compliance IP Management) are indicated on the top right side of the letter merely indicates that he, as representative, was the contact person and does not cast any doubts on the fact that the letter clearly originates from Evonik Degussa GmbH.

- 17.1 The board does not disregard the wrong indication in the accompanying letter of Dr. Frank Forster in the box mentioning the represented party ("Name des vertretenen Beteiligten"). However this indication in the framework of the other information present in the accompanying letter was so obviously mistaken that it could not plausibly lead to the opponent's designation being understood as the natural person Dr. Forster. In the accompanying letter (top of page 2) Dr. Frank Forster of the representative association Evonik Patent Association is unambiguously mentioned in his capacity as representative.

The obviousness of the mistake was also recognised by the opposition division (see points 1. and 2. at page 8 of the appealed decision) and by the respondent (see page 5, first and second full paragraph of the reply to the statement of grounds of appeal), who also accepted that in the accompanying letter Dr. Forster, the representative, was mistakenly identified as the represented party.

- 17.2 The board thus concludes that there cannot be any serious doubts that Dr. Forster was not the opponent.
18. It therefore follows that the only issue to be clarified was the question of the two different addresses indicated for Evonik Degussa GmbH in the letter of opposition. This is clearly a deficiency remediable in the context of Rule 76(2)(a) in conjunction with Rule 77(2) EPC (see also T 25/85, point 10 of the reasons). These deficiencies have been duly remedied by the appellant with letter of 4 July 2019, in which the full data of the opponent Evonik Degussa GmbH were provided. This letter confirmed the correct indication of the person of the opponent, which was already established at expiry of the opposition period, and specified one of the two originally mentioned addresses, as the intended one.
- 18.1 With regard to the appellant's letter of 4 July 2019, the board cannot follow the opposition division's reasoning that also Evonik Industries AG could have been identified as opponent in that letter on the basis of exactly the same evidence on file (see page 10 of the decision). As noted above, the name of this company does not appear in any opposition document, except for aspects which are irrelevant to the question of the

opponent's identity (in the accompanying letter as deposit account's owner and in the c/o address of the representative association).

19. It therefore cannot be said that the identity of Evonik Degussa GmbH as opponent was submitted for the first time with said letter. Since Evonik Degussa GmbH was designated as opponent upon expiry of the opposition period, the principle that it is not possible to subsequently nominate the opponent is not violated.

19.1 In this respect the board finds a fundamental difference between the facts underlying the present case and those behind decision T 25/85, cited by the respondent.

In the latter case, at expiry of the opposition period the name of the opponent was completely missing, whereas, in the present case, the name of Evonik Degussa GmbH was indicated in the letter of opposition.

20. The board also finds relevant differences with decision T 579/16 of 18 January 2017, cited by the parties in relation to the issue of correction under Rule 139 EPC. In that case two distinct entities were mentioned in the notice of opposition and in the Form 2300, so that there were objective doubts upon expiry of the opposition period as to the identity of the opponent. In addition, no communication had been issued by the EPO under Rule 77(2) EPC.

20.1 However in the present case, beyond mere speculations there is no actual question of choice between two or more possible opponents. For the reasons indicated above, neither Evonik Industries AG nor Dr. Frank Forster can be seriously contemplated as possible

opponents instead of Evonik Degussa GmbH, which was sufficiently designated at expiry of the opposition period and further confirmed in response to the invitation under Rule 77(2) EPC.

21. In view of the above considerations, the board concludes that the opposition is admissible.

22. Since the substantive issues of the opposition have not yet been discussed before the opposition division, the case is remitted to the opposition division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The opposition is admissible.
3. The case is remitted to the opposition division for further prosecution.
4. The request for refund of the appeal fee is refused.

The Registrar:

The Chairman:



D. Hampe

D. Semino

Decision electronically authenticated