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**Datasheet for the decision  
of 23 October 2024**

**Case Number:** T 2210/21 - 3.3.02

**Application Number:** 17171739.0

**Publication Number:** 3262941

**IPC:** A01N43/80, A01N59/16, A01P1/00,  
A61K31/425, A61K31/555,  
A61K33/30

**Language of the proceedings:** EN

**Title of invention:**  
ISOTHIAZOLINONE BIOCIDES ENHANCED BY ZINC IONS

**Patent Proprietor:**  
Arch Chemicals, Inc.

**Opponent:**  
Thor GmbH

**Headword:**  
ARCH CHEMICALS / ISOTHIAZOLINONE BIOCIDES

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
Text submitted or agreed by patent proprietor (no)

**Decisions cited:**

T 0073/84, T 0186/84, T 0798/90, T 0463/90, T 0014/99,  
T 1844/17, T 3007/18, T 0320/19, T 0411/20

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 2210/21 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 23 October 2024**

**Appellant:** Thor GmbH  
(Opponent) Landwehrstrasse 1  
67346 Speyer (DE)

**Representative:** Apenberg, Stefan  
Thor GmbH  
Landwehrstraße 1  
67346 Speyer (DE)

**Respondent:** Arch Chemicals, Inc.  
(Patent Proprietor) 412 Mount Kemble Avenue, Suite 200S  
Morristown, NJ 07960 (US)

**Representative:** Michalski Hüttermann & Partner  
Patentanwälte mbB  
Kaistraße 16A  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 11 November  
2021 rejecting the opposition filed against  
European patent No. 3262941 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** M. Maremonti  
L. Bühler

## **Summary of Facts and Submissions**

- I. The appeal by the opponent lies from the decision of the opposition division to reject the opposition against European patent No. 3 262 941 ("the patent").
- II. The opponent/appellant contested the opposition division's reasoning and requested that the appealed decision be set aside and that the patent be revoked.
- III. In its reply to the appeal, the patent proprietor/respondent requested that the appeal be dismissed, meaning that rejection of the opposition be confirmed and that the patent be maintained as granted. Alternatively, it requested that the patent be maintained in amended form on the basis of the claims of one of auxiliary requests 1 or 2 filed on 2 June 2020.
- IV. The board summoned the parties to oral proceedings to be held on 16 September 2024.
- V. By letter dated 29 August 2024, the patent proprietor withdrew its approval of the text of the patent as granted as well as of the claims of all auxiliary requests on file. The patent proprietor also withdrew its request for oral proceedings and stated that it expected "*that the patent be revoked without going into any substantive issue*".
- VI. By communication dated 5 September 2024, the board cancelled the oral proceedings.

### **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Since the patent proprietor withdrew its approval of the text of the granted patent as well as of the claims of all auxiliary requests on file there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the Boards of Appeal (see T 73/84, OJ EPO 1985, page 241, T 186/84, OJ EPO 1986, page 79, T 798/90, T 463/90, T 14/99, T 1844/17, T 3007/18, T 320/19, T 411/20) that under these circumstances the patent is to be revoked without further substantive examination. There are also no ancillary issues that would have to be dealt with by the board in the present case.

## 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:



L. Stridde

M. O. Müller

Decision electronically authenticated