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**Datasheet for the decision
of 25 March 2025**

Case Number: T 1000/23 - 3.3.02

Application Number: 15760361.4

Publication Number: 3040326

IPC: C09K5/04, C07C21/18, C10M171/00

Language of the proceedings: EN

Title of invention:
HALOOLEFIN-BASED COMPOSITION

Patent Proprietor:
Daikin Industries, Ltd.

Opponents:
The Chemours Company FC, LLC
ARKEMA FRANCE
AGC Inc.

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1000/23 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 25 March 2025

Respondent:
(Patent Proprietor)
Daikin Industries, Ltd.
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Representative:
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Appellant:
(Opponent 2)
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Representative:
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Appellant:
(Opponent 3)
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Representative:
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 March 2023 concerning maintenance of the
European Patent No. 3040326 in amended form**

Composition of the Board:

Chairman M. O. Müller
Members: P. O'Sullivan
 M. Blasi

Summary of Facts and Submissions

- I. The appeals of the patent proprietor (subsequently withdrawn as indicated below) and opponents 2 and 3 lie from the decision of the opposition division according to which European patent No. 3 040 326 as amended in the form of the (then) ninth auxiliary request met the requirements of the EPC.
- II. The patent proprietor requested, as its main request, maintenance of the patent as granted, implying rejection of the oppositions, or alternatively maintenance of the patent in amended form on the basis of one of the sets of claims of auxiliary requests 1 to 39. The opponents requested revocation of the patent.
- III. The board summoned the parties to oral proceedings as requested and issued a preliminary opinion in a communication pursuant to Article 15(1) RPBA. Oral proceedings by videoconference before the board took place as scheduled on 25 March 2025.
- IV. During the oral proceedings, the patent proprietor withdrew its appeal, withdrew the approval of the text of the patent as granted, withdrew all claim requests and stated that it did not intend to submit any further text for amending the patent.

Reasons for the Decision

1. Pursuant to 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. In view of the patent proprietor's statement during the oral proceedings (point IV, above), there is no approved text on the basis of which the board could consider whether a ground for opposition prejudices the maintenance of the patent as granted or whether an amended text complies with the patentability requirements. Hence, it is no longer possible to take a decision as to the patent in substance because the absence of an approved text for the patent precludes any substantive examination of the alleged impediments to patentability. No other issues than the patent had to be considered by the board in this appeal case.
3. According to the case law of the boards of appeal, in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent without assessing issues relating to patentability. This is because the patent proprietor no longer challenges the opponents' requests for revocation of the opposed patent, and the patent cannot be maintained against the proprietor's will (see decision T 73/84, OJ EPO 1985, 241, and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, III.B.3.3).
4. Since the patent proprietor withdrew its appeal before the decision was announced at oral proceedings, the patent proprietor's appeal fee is to be reimbursed at 25% in accordance with Rule 103(4)(a) EPC.

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:



U. Bultmann

M. O. Müller

Decision electronically authenticated