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Datasheet for the decision of 17 January 2025

Case Number: T 1102/23 - 3.2.07

Application Number: 13840112.0

Publication Number: 2768621

IPC: B05D3/12, D21H19/40, D21H19/38, D21H21/50, D21H21/52, C08K5/098, C08K3/26, C09C1/02, C09D101/32, C09D101/28, C08K3/34, C09D133/08, C08L31/04, D21H19/64

Language of the proceedings: EN

Title of invention:
COATING COMPOSITION AND COATED PAPER AND COATED PAPERBOARD

Patent Proprietor:
Imerys Pigments, Inc.

Opponent:
Omya International AG

Headword:

Relevant legal provisions:
EPC Art. 113(2)
RPBA 2020 Art. 12(8)

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

Decisions cited:
T 0073/84, T 0677/90, T 0411/22, T 1254/22

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1102/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 17 January 2025

Appellant: (Opponent)	Omya International AG Baslerstrasse 42 4665 Oftringen (CH)
Representative:	Maiwald GmbH Elisenhof Elisenstraße 3 80335 München (DE)
Respondent: (Patent Proprietor)	Imerys Pigments, Inc. 100 Mansell Court East, Suite 300 Roswell, GA 30076 (US)
Representative:	Haseltine Lake Kempner LLP One Portwall Square Portwall Lane Bristol BS1 6BH (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 17 April 2023 rejecting the opposition filed against European patent No. 2768621 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Patton
Members:	S. Watson
	E. Mille

Summary of Facts and Submissions

I. An appeal was filed by the opponent against the decision of the opposition division to reject the opposition against European patent No. 2 768 621.

II. The parties initial requests were as follows.

The opponent ("appellant") requested that the decision under appeal be set aside and the patent be revoked in its entirety.

The patent proprietor ("respondent") requested that the appeal be dismissed, or if the decision under appeal be set aside that the case be remitted to the opposition division for prosecution of the first to third auxiliary requests filed with the reply to the appeal.

III. The parties were summoned to attend oral proceedings to be held on 23 April 2025.

IV. In a communication according to Article 15(1) RPBA, dated 13 December 2024, the board gave its preliminary opinion that the patent should be revoked as none of the requests was allowable.

V. With letter of 16 January 2025 the respondent stated that it no longer approved the text of the patent as granted, it also withdrew all other requests and indicated that no further requests would be submitted.

VI. Oral proceedings were then cancelled by the board.

Reasons for the Decision

1. According to Article 113(2) EPC the EPO shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. In the present case, the respondent withdrew its approval of the text of the patent as granted, withdrew all other pending requests and indicated that no further requests would be submitted.

3. It follows that there is no text submitted or agreed by the proprietor of the patent on which the board can decide.

4. In view of this, the patent must be revoked (see Case Law of the Boards of Appeal, 10th edition 2022, III.B.3.3 and decisions T 73/84, T 677/90, T 411/22 and T 1254/22).

5. As the respondent withdrew all its other pending requests, which is understood by the board as including its request for oral proceedings, and since the appellant requested oral proceedings only in the event that the patent was not to be revoked, oral proceedings in the present case were cancelled and the decision taken in writing (Article 12(8) RPBA).

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:

G. Nachtigall G. Patton

Decision electronically authenticated