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**Datasheet for the decision
of 30 April 2025**

Case Number: T 1229/23 - 3.3.02

Application Number: 16784254.1

Publication Number: 3334518

IPC: B01D53/94, B01J35/00,
B01J23/644, F01N3/10,
B01J23/656, B01J23/78,
B01J29/80, B01J29/83,
B01J35/04, B01J37/00,
B01J37/02, B01J29/78,
B01J37/10, F01N3/08

Language of the proceedings: EN

Title of invention:

OXIDATION CATALYST FOR A DIESEL ENGINE EXHAUST

Patent Proprietor:

Johnson Matthey Public Limited Company

Opponent:

Umicore AG & Co. KG

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Basis of decision - text or agreement to text withdrawn by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 1627/21

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 1229/23 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 30 April 2025

Appellant:

(Opponent)

Umicore AG & Co. KG
Rodenbacher Chaussee 4
63457 Hanau-Wolfgang (DE)

Representative:

Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstraße 3
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Respondent:

(Patent Proprietor)

Johnson Matthey Public Limited Company
5th Floor
2 Gresham Street
London EC2V 7AD (GB)

Representative:

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 June 2023 concerning maintenance of the
European Patent No. 3334518 in amended form.**

Composition of the Board:

Chairman

M. O. Müller

Members:

S. Bertrand

L. Bühler

Summary of Facts and Submissions

- I. The appeal by the opponent ("appellant") is against the opposition division's interlocutory decision that European patent No. 3 334 518 in amended form according to the set of claims of the main request filed on 14 March 2023 and the invention to which it relates meet the requirements of the EPC.
- II. In the written appeal proceedings, the patent proprietor ("respondent") requested that the patent be maintained in amended form on the basis of the set of claims of the new main request filed with the letter dated 28 February 2025 or, if the new main request is not admitted, on the basis of the set of claims of auxiliary request 6 filed with the reply to the grounds of appeal.
- III. The board summoned the parties to oral proceedings as requested and subsequently informed them of its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- IV. With a letter dated 17 April 2025, the appellant announced that it would not be attending the oral proceedings.
- V. Oral proceedings before the board took place on 30 April 2025 in the absence of the appellant.
- VI. During the oral proceedings, the respondent withdrew its consent and agreement under Article 113(2) EPC to the text of the patent as granted and also withdrew all requests on file.

Reasons for the Decision

1. According to the principle of party disposition established by Article 113(2) EPC, the European Patent Office will examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the patent proprietor.
2. In view of the respondent's statement during the oral proceedings (point VI. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (T 1627/21, point 2 of the Reasons and decisions cited therein).
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 under Article 101 EPC without assessing issues relating to patentability since the respondent no longer challenges the request for revocation of the opposed patent and the patent cannot be maintained against the respondent's (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).

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