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**Datasheet for the decision  
of 19 May 2025**

**Case Number:** T 1289/23 - 3.3.02

**Application Number:** 17200178.6

**Publication Number:** 3480263

**IPC:** C09D7/00

**Language of the proceedings:** EN

**Title of invention:**  
CLEAR COATING COMPOSITIONS

**Patent Proprietor:**  
IMERTECH SAS

**Opponent:**  
OMYA International AG

**Headword:**  
IMERTECH / CLEAR COATING COMPOSITIONS

**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, T 2210/21

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0

**Case Number:** T 1289/23 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 19 May 2025**

**Appellant:** OMYA International AG  
(Opponent) Baslerstrasse 42  
4665 Oftringen (CH)

**Representative:** Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Respondent:** IMERTECH SAS  
(Patent Proprietor) 43, quai de Grenelle  
75015 Paris (FR)

**Representative:** Haseltine Lake Kempner LLP  
Bürkleinstrasse 10  
80538 München (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
11 April 2023 concerning maintenance of the  
European Patent No. 3480263 in amended form.

**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 interlocutory decision of the opposition division, according to which European patent No. 3 480 263 ("the patent") as amended in the form of auxiliary request 2, the claims of which were filed by letter dated 20 January 2023, and the invention to which it relates, meets the requirements of the EPC.
- II. In its statement of grounds of appeal and a subsequent letter, 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 patent be maintained in amended form on the basis of the claims of auxiliary request 2 found allowable by the opposition division (main request on appeal), this amounting to request that the appeal be dismissed. Alternatively, the respondent requested that the patent be maintained in amended form on the basis of the claims of one of auxiliary requests 1 or 2 filed with the reply to the appeal.
- IV. The board summoned the parties to oral proceedings to be held on 24 June 2025.
- V. By letter dated 12 May 2025, the patent proprietor withdrew its approval of the text of the patent as granted. Moreover, the patent proprietor withdrew all requests, including all previous main and auxiliary claim requests and stated that it would not be filing any new request. The patent proprietor further stated that it understood that the oral proceedings would be

cancelled and that a decision revoking the patent would be issued.

- VI. By communication dated 15 May 2025, 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 in which the patent was granted and also withdrew all claim 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 and T 2210/21) 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:



U. Bultmann

M. O. Müller

Decision electronically authenticated