

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 22 September 2025**

**Case Number:** T 0023/24 - 3.3.03

**Application Number:** 17863295.6

**Publication Number:** 3538572

**IPC:** C08F210/16

**Language of the proceedings:** EN

**Title of invention:**

ETHYLENE POLYMERS AND ETHYLENE COPOLYMERS FOR BLOWN FILMS

**Patent Proprietor:**

Chevron Phillips Chemical Company LP

**Opponents:**

Borealis GmbH  
TotalEnergies OneTech Belgium  
The Dow Chemical Company

**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Basis of decision - text or agreement to text withdrawn by  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 0186/84



**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 0023/24 - 3.3.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 22 September 2025**

**Appellant 1:** Chevron Phillips Chemical Company LP  
(Patent Proprietor) 10001 Six Pines Drive  
The Woodlands, Texas 77380 (US)

**Representative:** Potter Clarkson  
Chapel Quarter  
Mount Street  
Nottingham NG1 6HQ (GB)

**Appellant 2:** TotalEnergies OneTech Belgium  
(Opponent 2) Zone Industrielle C  
7181 Seneffe (BE)

**Representative:** Mellet, Valérie Martine  
Patent 42  
5, rue Dicks  
4081 Esch-sur-Alzette (LU)

**Appellant 3:** The Dow Chemical Company  
(Opponent 3) 2211 H.H. Dow Way  
Midland MI 48674 (US)

**Representative:** Beck Greener LLP  
Fulwood House  
12 Fulwood Place  
London WC1V 6HR (GB)

**Party as of right:** Borealis GmbH  
(Opponent 1) Trabrennstrasse 6-8  
1020 Vienna (AT)

**Representative:** Kador & Partner Part mbB  
Corneliusstraße 15  
80469 München (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
9 November 2023 concerning maintenance of the  
European Patent No. 3538572 in amended form.

**Composition of the Board:**

**Chairman** D. Semino  
**Members:** O. Dury  
M. Millet

## **Summary of Facts and Submissions**

- I. The appeals by the patent proprietor and opponents 2 and 3 lie from the interlocutory decision of the opposition division concerning maintenance of European patent No. 3 538 572 in amended form according to the claims of auxiliary request 9 filed with letter of 9 August 2023 and an adapted description.
- II. In their statement of grounds of appeal, the patent proprietor (appellant 1) requested that the decision of the opposition division be set aside and the oppositions be rejected (main request) or, in the alternative, that the patent be maintained in amended form on the basis of any of auxiliary requests 1 to 11 filed therewith.
- III. In their respective statement of grounds of appeal opponents 2 and 3 (appellant 2 and 3) both requested that the decision of the opposition division be set aside and the patent be revoked. Additionally, opponent 1 (party as of right to the appeal proceedings pursuant to Article 107, second sentence, EPC) submitted reasons why they considered that "Revocation of the patent in its entirety is justified" (letter of 5 July 2024: in particular page 24, last sentence).
- IV. Together with the summons to oral proceedings dated 16 July 2025, a communication pursuant to Article 15(1) RPBA was issued by the Board in preparation of the oral proceedings.
- V. With letter of 15 September 2025 appellant 1 stated:  
  
"We hereby inform you that we no longer approve the

text in which the patent is granted and will not submit an amended text. For the avoidance of doubt, we also withdraw all Auxiliary Requests filed during these proceedings.

It is our understanding and wish that the appeal proceedings will be discontinued, the oral proceedings scheduled for 9 January 2026 will be cancelled, and the patent will be revoked."

VI. The oral proceedings were then cancelled.

### **Reasons for the Decision**

1. Under the provisions of 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 appellant 1/the patent proprietor unambiguously indicated in their letter dated 15 September 2025 that they withdrew their approval of the text in which the patent was granted as well as any pending claim requests and that they would not be submitting an amended text, with the consequence that the patent was to be revoked. This constitutes a disapproval of any version of the text of the then pending requests. Therefore, agreement by the patent proprietor pursuant to Article 113(2) EPC cannot be held to be given.
3. Under such circumstances a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation,

without going into the substantive issues (see e.g. decisions T 73/84 and T 186/84).

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. European patent No. 3 538 572 is revoked.

The Registrar:

The Chairman:



D. Hampe

D. Semino

Decision electronically authenticated