

**Internal distribution code:**

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

**Datasheet for the decision  
of 5 September 2025**

**Case Number:** T 0221/24 - 3.3.03

**Application Number:** 17805156.1

**Publication Number:** 3545021

**IPC:** C08K3/01, C08K3/04, C08K3/26,  
C08K3/30, C08K3/34, C08K3/36,  
C08K5/14, C08J3/22, C08L9/06,  
C08L23/16, C08L33/08

**Language of the proceedings:** EN

**Title of invention:**  
PEROXIDE MASTERBATCH

**Patent Proprietor:**  
Nouryon Chemicals International B.V.

**Opponent:**  
ARKEMA FRANCE

**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Basis of decision - text or agreement to text withdrawn by  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 0221/24 - 3.3.03**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 5 September 2025**

**Appellant:**

(Opponent)

ARKEMA FRANCE  
420, Rue d'Estienne d'Orves  
92700 Colombes (FR)

**Representative:**

Arkema Patent  
Arkema France  
DRD-DPI  
51, Esplanade du Général de Gaulle  
CS 10478  
92907 Paris La Défense Cedex (FR)

**Respondent:**

(Patent Proprietor)

Nouryon Chemicals International B.V.  
Velperweg 76  
6824BM Arnhem (NL)

**Representative:**

Ingrassia, Fisher & Lorenz UK Ltd.  
Cambridge House  
Henry Street  
Bath BA1 1BT (GB)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
18 December 2023 concerning maintenance of the  
European Patent No. 3545021 in amended form.**

**Composition of the Board:**

**Chairman** D. Semino

**Members:** O. Dury  
W. Ungler

## **Summary of Facts and Submissions**

- I. The appeal by the opponent (appellant) lies from the interlocutory decision of the opposition division concerning maintenance of European Patent No. 3 545 021 in amended form on the basis of the claims of the main request filed with letter of 8 September 2023.
- II. In their statement of grounds of appeal the appellant requested that the decision of the opposition division be set aside and the patent be revoked.
- III. With letter of 9 April 2025 the patent proprietor (respondent) requested that the appeal be dismissed (main request) or, in the alternative, that the patent be maintained in amended form according to auxiliary request 1, which had been filed as auxiliary request 4 with the rejoinder to the statement of grounds of appeal.
- IV. Together with the summons to oral proceedings dated 25 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 4 August 2025 the respondent stated:  
  
"(T)he Proprietor hereby withdraws its consent to the text of the patent in the form as granted, withdraws all claim requests on file, and declares that it will not be filing a replacement text.

As there is no approved text of the patent, European patent EP3545021B1 is to be revoked with the

consequences specified in Art. 68 EPC".

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 the respondent/patent proprietor unambiguously indicated in their letter dated 4 August 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. 3 545 021 is revoked.

The Registrar:

The Chairman:



D. Hampe

D. Semino

Decision electronically authenticated