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**Datasheet for the decision
of 28 August 2025**

Case Number: T 0453/24 - 3.3.10

Application Number: 12732057.0

Publication Number: 2661420

IPC: C07C21/18, C07C19/10,
C07C17/25, C07C17/20,
C07C17/383, B01D3/00

Language of the proceedings: EN

Title of invention:

LOW TEMPERATURE PRODUCTION OF 2-CHLORO-3,3,3-TRIFLUOROPROPENE

Patent Proprietor:

Honeywell International Inc.

Opponent:

ARKEMA FRANCE

Headword:

Apportionment of costs

Relevant legal provisions:

EPC Art. 104(1), 104(2)
EPC 1973 Art. 104(1)
EPC R. 88(1), 88(2), 88(3), 97(2)
RPBA 2007 Art. 16(2)

Keyword:

Different apportionment of costs - amount confirmed

Decisions cited:

G 0007/93, T 0475/07, T 1663/13, T 0034/14, T 0561/19

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0453/24 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 28 August 2025

Appellant:

(Opponent)

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Respondent:

(Patent Proprietor)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 26 January 2024 on
the fixing of costs apportioned under the
decision of the Opposition Division dated
21 December 2018.**

Composition of the Board:

Chairman	P. Gryczka
Members:	F. Blumer
	A. Zellner

Summary of Facts and Submissions

- I. The opponent (appellant in the present proceedings) filed an opposition against the respondent's patent on the grounds of 100(a), 100(b) and 100(c) EPC.
- II. During a first oral proceedings before the opposition division on 10 November 2017, the appellant filed several documents, including experimental evidence. These documents were admitted, and the opposition division adjourned the oral proceedings. The second oral proceedings took place on 13 September 2018. The patent proprietor requested that the costs arising from the second oral proceedings be borne by the opponent.
- III. In its interlocutory decision of 21 December 2018, the opposition division found the then pending main request to be allowable and decided that *"the costs incurred by the proprietor in respect to the second oral proceedings should be borne by the opponent"*. More specifically, the opposition division concluded at the end of its reasons *"that the costs incurred by the proprietor in respect to the second oral proceedings (including travel costs and the time that will be charged by the proprietor's representatives to prepare and attend said oral proceedings) should be borne by the opponent"* (see the last page of the decision).
- IV. This decision was appealed by the opponent who requested that the patent be revoked and that the decision on a different apportionment of costs be reversed.
- V. The board in charge of the case dismissed the appeal in its decision T 561/19 of 8 November 2022. It saw no

fault in the opposition division's decision to award a different apportionment of costs pursuant to Article 104(1) EPC (Reasons, point 7.13).

- VI. In the course of the subsequent proceedings before the opposition division on fixing the amount of costs the patent proprietor (respondent in the present proceedings) requested that the costs be fixed at a total amount of GBP 16 827.67. The request was supported by an invoice for the same amount issued on 28 September 2018 to the respondent. The invoice covered professional charges in the amount of GBP 14 381.50 and travel costs in the amount of GBP 2 446.17, and it was filed earlier with the opposition division on 12 April 2019 and re-filed on 24 March 2023. After having been informed by the EPO's formalities officer that supporting evidence related to said invoice was missing, the respondent filed various documents as evidence for the travel costs of GBP 2 446.17 (Annexes 1 to 4 filed with letter of 11 May 2023). With the same letter, the respondent filed a letter of 10 May 2023 confirming that no payment had been received in connection with the apportionment of costs.
- VII. In its decision of 26 January 2024 (decision under appeal) the opposition division eventually fixed the amount at GBP 16 162.42, the difference related to a part of the travel costs that was found not to be related to the second oral proceedings held in The Hague (namely, costs incurred for Ms Cornish for travelling from The Hague to Madrid after the oral proceedings). Based on the exchange rate of the European Central Bank at the date of this decision, the amount was converted and fixed at EUR 18 910,03.

VIII. The appellant (opponent) requested, as its main request, that the decision under appeal, awarding costs in the amount of GBP 16 162.24 or EUR 18 910.03 to the respondent under Article 104(2) and Rule 88(3) EPC, be set aside and that the following costs not be considered for the final amount:

- a) the costs related to work on the file before the oral proceedings on 4 September 2018 and 5 September 2018;
- b) the costs incurred by Ms Cornish for preparing and participating in the oral proceedings;
- c) the costs related to the work of Mr Wood; and
- d) the costs incurred by Mr Abthorpe for preparing and participating in the oral proceedings, in the absence of a more detailed bill of costs.

As an auxiliary request, the appellant requested that at least the following costs are not considered for the final amount:

- a) the costs related to work on the file before the oral proceedings on 4 September 2018 and 5 September 2018;
- b) the costs incurred by Ms Cornish for preparing and participating in the oral proceedings;
- c) the costs related to the work of Mr Wood; and
- d) the costs incurred by Mr Abthorpe for preparing and participating in the oral proceedings, in the absence of a more detailed bill of costs, to the extent they exceed an amount of EUR 2 000 per day (i.e., EUR 4 000 for two days - one day for the preparation and one day for the oral proceedings).

The respondent (patent proprietor) requested that the appeal be dismissed.

- IX. Oral proceedings before the board of appeal were held on 28 August 2025 in the format of a videoconference, as requested by the appellant.
- X. At the end of the oral proceedings, the decision was announced.

Reasons for the Decision

1. Admissibility

The appeal is admissible. Under Rule 97(2) EPC, a decision fixing the amount of costs of opposition proceedings under Article 104 EPC cannot be appealed unless the amount exceeds that of the fee for appeal. In the present case, the disputed amount of costs exceeds the appeal fee.

2. Legal background

2.1 Under Article 104(1) EPC, each party to the opposition proceedings shall bear the costs it has incurred, unless the opposition division, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs. Under Article 104(1) EPC 1973, the different apportionment of costs was limited to *"a different apportionment of costs incurred during taking of evidence or oral proceedings"*.

2.2 For the procedure for fixing costs, Article 104(2) EPC also refers to the Implementing Regulations. The reference applies to Rule 88 EPC ("Costs"). As for the amount of costs to be fixed, Rule 88(1) EPC, second and third sentences, EPC provides as follows: *"Such apportionment of costs shall onyl take into*

consideration the expenses necessary to assure proper protection of the rights involved. The costs shall include the remuneration of the representatives of the parties."

- 2.3 In contrast to most national procedural laws and the applicable regulations for the Unified Patent Court (UPC) - which refer to, for example, specified amounts depending on the value in dispute - the EPC's legal framework does not contain any more specific provisions for the determination of the amount of the relevant costs. However, the lack of such specific rules does not imply that all and every amount incurred by a party automatically need to be taken into account.
- 2.4 Apart from the restriction to *"expenses necessary to assure proper protection of the rights involved"* in Rule 88(1) EPC, Article 16(2), third sentence, RPBA, refers, for cost apportionments ordered by a board of appeal, to *"costs necessarily and reasonably incurred"*.
- 2.5 The board in T 34/14 (Reasons, point 5.4) found that an opposition division's decision on apportionment of cost is a discretionary one that should be overruled only if the board comes to the conclusion either that the first instance department exercised its discretion in accordance with the wrong principles or in an unreasonable way, and has thus exceeded the proper limits of discretion. For cost apportionments ordered by a board in the course of appeal proceedings, the RPBA explicitly refer to the board's discretion to order cost apportionment under certain circumstances (Article 16(2), second sentence, RPBA). In particular, the board's decision to include certain cost components like costs for representatives or witnesses is discretionary (see also Article 16(2), third sentence,

RPBA: *"may include..."*). The exercise of discretion includes assessing whether the cost positions and the respective amounts requested under Article 104 EPC relate to necessarily and reasonably incurred costs.

2.6 Regardless of the discretionary nature of an opposition division's decision on cost apportionment, the standard of proof is not very high when it comes to the determination of the amount of apportioned costs under Article 104 EPC (see Rule 88(2), last sentence, EPC: *"Costs may be fixed once their credibility is established."*.)

2.7 Taking into account the above and the limitations a board of appeal has to observe when reviewing a discretionary decision of a first instance department (see G 7/93, OJ EPO 1994, 775, Reasons, point 2.6), a board may, when reviewing a cost apportionment, only assess whether the first instance department exercised its discretion in an unreasonable or arbitrary way.

3. Scope of the appeal / undisputed issues

3.1 The appellant requests that certain components of the apportioned costs for professional representation and travel (specified as a) through d) or d'), respectively) be excluded from the amount fixed by the opposition division. Consequently, the appellant accepts the apportionment of the remaining amount (i.e. the difference between the components to be excluded and the total amount of GBP 16 162.42).

3.2 It remained undisputed that the documented amounts were charged to the respondent by the respective service providers, that the calculations underlying the amounts of the disputed cost components are correct and that

the respondent has not challenged any of the amounts vis-à-vis its representatives and other service providers such as hotels etc. The respondent has not received any payment from the appellant in connection with the apportionment of costs ordered by the decision under appeal (see the respondent's letter of 10 May 2023).

3.3 From its requests it follows, in particular, that the appellant is prepared to reimburse all costs incurred by Mr Abthorpe if a more detailed bill of costs is presented (main request) or that the appellant would accept the reimbursement of the costs incurred by Mr Abthorpe if they are capped at an amount of EUR 2 000 per day, i.e. EUR 4 000 for two days (auxiliary request).

4. Cost components considered by the decision under appeal

The board has to assess whether the individual cost positions and the respective amounts awarded could reasonably be viewed as *"costs incurred by the proprietor in respect to the second oral proceedings"* which include *"travel costs and the time that will be charged by the proprietor's representatives to prepare and attend said oral proceedings"* in the terms of the opposition division's decision confirmed in the first appeal (T 561/19, see above Facts and Submissions, point V.) or whether the opposition division's decision on any of these cost positions was unreasonable or arbitrary.

4.1 *Costs a) - work done on 4 and 5 September 2018*

4.1.1 The board notes that the work done on 4 and 5 September 2018 (reflected by an amount of GBP 2 545,50) was done

within 10 days before the oral proceedings. In view of important oral proceedings it is a prudent (and not an unreasonable) approach in the board's view not to wait with the preparation until the very last days before oral proceedings.

4.1.2 The appellant's allegation that part of the work billed on 5 September 2019 was not related to the present case remains speculative. The respective position concerning the "live technical issues" forms part of an invoice clearly related to the present case (see the patent title on the front page of the invoice).

4.1.3 The board cannot see that it was unreasonable or arbitrary to charge the above amount for work done on 4 and 5 September 2018 and to consider it for the apportionment of costs.

4.2 *Costs b) - work of Ms Cornish*

4.2.1 The appellant takes the position that the presence of Ms Cornish at the second oral proceedings (and the respective expenses calculated at GBP 3 655.00 by the appellant) could have been avoided since she did not actively take part in these oral proceedings.

4.2.2 The respondent was represented by two professional representatives not only at the oral proceedings of 13 September 2018 but also at the first oral proceedings before the opposition division on 10 November 2017, which was also held in person in The Hague.

4.2.3 The board concludes that the presence of two professional representatives at relevant oral proceedings was standard practice in the course of the

work done for the respondent by its representatives. The board notes that this practice is very common among parties to proceedings before the EPO.

4.2.4 To the board it is irrelevant how the two representatives of a party share their presentation of the case in oral proceedings. Which representative is speaking on what topic may also depend on the course of the oral proceedings. If two representatives attend at oral proceedings, both of them have to undertake a certain amount of preparation. From the appellant's submissions during oral proceedings before the board, it is understood that Ms Cornish did speak during the first oral proceedings but not during the second oral proceedings. Given that often it only becomes clear in the course of oral proceedings which topics need to be discussed and accepting that it is an internal matter between two representatives how to share the work, it cannot be argued after the oral proceedings that the presence of a representative who did not speak was not necessary or unreasonable. When reviewing the opposition division's discretionary decision on the apportionment of costs, it is not the board's role to establish or speculate on which representative was primarily tasked with work concerning cost issues or specific grounds for opposition or on which representative had a leading or a supporting role.

4.2.5 In the board's view, it is neither unreasonable nor arbitrary to take into account the above-mentioned costs incurred for the presence of Ms Cornish at the second oral proceedings for the apportionment of costs.

4.3 *Costs c) - work of Mr Wood*

- 4.3.1 The appellant argues that Mr Wood was not a professional representative when he was involved in the preparation of the oral proceedings of 13 September 2018. The costs for his services should therefore not be acknowledged for the apportionment of costs. The appellant further considered that Mr Wood may have spent too much time on the tasks attributed to him in this context.
- 4.3.2 The board notes that the work of Mr Wood (for which the amount of GBP 1 003.00 was billed) is described in detail in the invoice of 28 September 2018. The board agrees with the respondent in that the work of Mr Wood was substantive work (for example on the adaptation of the description) that had to be done anyway, either by one of the professional representatives involved or by another member of their firm. Since it is common practice to task trainee attorneys with certain work for which they are qualified, the cost of their work performed under the supervision of a professional representative should be considered also for the purposes of the apportionment of costs.
- 4.3.3 The board is not in a position to fully examine how many hours and minutes Mr Wood or any of his colleagues should have spent for each individual task. The board cannot see that the total amount billed for Mr Wood's work was inappropriate for the work done or that tasking a professional representative with the same work would have led to lower costs.
- 4.3.4 The board further notes that Mr Wood was present at the second oral proceedings before the opposition division on 13 September 2018 (see the respective minutes). His

participation and the related travel costs are however not reflected in the costs for which apportionment is claimed (see the invoice for professional services re-filed on 24 March 2023).

4.3.5 The Board therefore concludes that it is neither arbitrary nor unreasonable to include costs c) in the amount to be apportioned.

4.4 *Costs d)/d') - work of Mr Abthorpe*

4.4.1 According to the appellant's calculations, the invoice of 28 September 2018 encompasses a total amount of GBP 7 177.50 for the work Mr Abthorpe did during the four days between 10 September and 13 September 2018 for the preparation and participation in the oral proceedings of 13 September 2018 (not taking into account the work done on 4 and 5 September 2018). The appellant requests that said amount only be apportioned after a more detailed invoice is presented (main request) or that the amount be capped at EUR 4 000.00 (one day for the preparation and one day for the representation at the oral proceedings).

4.4.2 In the board's view it is legitimate not to disclose the hourly rate in the present situation where the work done on each day is described in detail and the fees incurred are specified per staff member and per day. Referring to Rule 88 EPC, the board in T 475/07 (Reasons, point 7.5) assumed that the representative spent two days for the preparation and representation at oral proceedings by a German professional representative and accepted costs of EUR 2 300.00 without any cost calculations. In the decision under appeal, the opposition division referred to decision T 1663/13 where costs of 2 000.00 per day for a Dutch

professional representative were found to be reasonable and indicated that due to increased attorney charges daily attorney costs between EUR 2 500.00 and EUR 3 000.00 might still qualify as reasonable.

4.4.3 The board does not consider the amount of GBP 7 177.50 for Mr Abthorpe's work between 10 and 13 September 2018 to be unreasonable. On the one hand, the appellant's assumption that Mr Abthorpe spent only two working days on this work lacks any basis. On the other hand, a daily rate between GBP 2 400.00 and GBP 3 600.00 (assuming between two and three working days were spent) does not seem to be unreasonable given that the rates vary between Contacting States and that the rates generally tend to increase rather than decrease.

4.4.4 Also for the costs referred to under d) and d'), the board cannot see that the respective amount is based on an unreasonable or arbitrary assessment by the opposition division.

5. Conclusion

For the reasons given above, none of the individual cost components a) through d) or d') has been incurred in an arbitrary or unreasonable way. Therefore the appeal should be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated