



Europäisches Patentamt  
Beschwerdekammern

European Patent Office  
Boards of Appeal

Office européen des brevets  
Chambres de recours

Veröffentlichung im Amtsblatt	J/Nein
Publication in the Official Journal	Yes/No
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Aktenzeichen / Case Number / N<sup>o</sup> du recours : T 230/84

Anmeldenummer / Filing No / N<sup>o</sup> de la demande : 79 900 558.2

Veröffentlichungs-Nr. / Publication No / N<sup>o</sup> de la publication : 0 018 416

Bezeichnung der Erfindung:

Title of invention:

Titre de l'invention :

Cationic electrocoating method

Klassifikation / Classification / Classement :

C25D 13/22

### ENTSCHEIDUNG / DECISION

vom / of / du 16 October 1985

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

Kansai Paint Co. Ltd. (respondent)

Einsprechender / Opponent / Opposant :

- (1) Stollack Aktiengesellschaft
  - (2) BASF Farben + Fasern Aktiengesellschaft
- (appellants)

Stichwort / Headword / Référence :

EPÜ / EPC / CBE

Articles 102(3)(a), 113(2)

"Revocation at the instigation of the  
patent proprietor"

Leitsatz / Headnote / Sommaire



Case Number: T 230 / 84

**DECISION**  
of the Technical Board of Appeal 3.4.1  
of 16 October 1985

**Appellant's**  
(Opponent I): Stollack Aktiengesellschaft  
Mödlingerstrasse 15  
A-2353 Guntramsdorf  
Austria

(Opponent II): BASF Farben + Fasern Aktiengesellschaft  
Max-Winkelmann-Strasse 80  
Postfach 6123  
D-4400 Münster-Hiltrup  
Bundesrepublik Deutschland

**Respondent:**  
(Proprietor of the patent) KANSAI PAINT CO. LTD.  
365 Kanzaki Amagasaki-shi  
Hyago 661  
Japan

**Representative:**  
LOW, Peter John  
WILSON, GUNN & ELLIS  
41-51 Royal Exchange Cross Street  
Manchester M2 7DB  
United Kingdom

**Decision under appeal:** Decision of the Opposition Division of the European Patent Office  
dated 8 May 1984 rejecting the opposition filed against  
European patent No. 0 018416 pursuant to  
Article 102(2) EPC

**Composition of the Board:**

**Chairman:** O. HUBER  
**Member:** J. ROSCOE  
**Member:** F. BENUSSI

### Summary of Facts and Submissions

- I. In a decision taken at oral proceedings held on 8 May 1984 and communicated on 30 July 1984, the Opposition Division rejected the oppositions which had been filed against European patent No. 0 018 416, granted upon the subject-matter of European patent application No. 79 900 558.2, and maintained the patent unamended.
- II. The first opponent, Stollack Aktiengesellschaft, lodged an appeal against this decision on 26 September 1984, paid the appeal fee on 20 September 1984, and filed the Statement of Grounds on 22 November 1984.  
The second opponent, BASF Farben und Fasern Aktiengesellschaft, lodged an appeal on 27 September 1984 with simultaneous payment of the appeal fee, and filed the Statement of Grounds on 5 December 1984.
- III. In a letter dated 10 June 1985, received on 13 June 1985, the representative of the patentees stated that they did not approve of the text of the specification with the intent that the patent should be revoked.

### Reasons for the Decision

1. Both appeals comply with Articles 106 to 108 and Rule 64 EPC and are therefore admissible.
2. The Board cannot decide whether the appeals are wholly or partially justified. Since the patentees have stated that they no longer approve of the text of the patent as granted and have not submitted an amended text, there is now no text of the patent on the basis of which the Board can consider the appeal: Article 113(2) EPC requires that the European Patent

Office shall consider the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

3. Since the text of the patent is thus under the control of the patent proprietor(s) it follows that a patent cannot be maintained against his(their) will. If, as in the present case, the patent proprietors withdraw their approval, expressed before the first instance, of the text of the patent as granted with the stated intent that the patent should be revoked it must be concluded that they wish to prevent any text whatever of the patent being maintained.
4. The patent proprietors cannot, however, terminate the proceedings by informing the European Patent Office that they are surrendering the European patent since the Convention makes no provision for this. Thus, they could only, as far as national law permitted, surrender the patent vis-à-vis the national patent offices of the designated Contracting States under the relevant national law.
5. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. In such circumstances the only course open to the Board is for it to revoke the patent, as envisaged for other reasons in Article 102 EPC (see Decision of the Technical Board of Appeal 73/84 dated 26 April 1985, OJ EPO 8/1985, p. 241).

#### Order

For these reasons,

it is decided that:

- (1) The decision of the Opposition Division is set aside.
- (2) The European Patent No. 0 018 416 is revoked.

The Registrar:

J. Ruckerl

The Chairman:

O. Huber