

Publication in the Official Journal ~~Yes~~ / No

File Number: T 134/89 - 3.3.1
Application No.: 82 201 648.1
Publication No.: 083 139
Title of invention: A process for coating a substrate with a liquid coating composition
Classification: C09D 3/70

Interlocutory
D E C I S I O N
of 17 February 1992

Proprietors of the patent: Astral Société de Peintures et Vernis

Opponents: 01 Hüls AG
02 Schramm Lacke GmbH

Headword:

EPC: Article 107

Keyword: "Refund of an appeal fee (no, following G 2/91)"

Headnote



Case Number : T 134/89 - 3.3.1

Interlocutory
D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 17 February 1992

Appellants :
(Opponent)

01 Hüls AG
Postfach 1320
D-4370 Marl 1

02 Schramm Lacke GmbH
Kettelerstrasse 100
D-6050 Offenbach

Representative :

Weber, Dieter, Dr.
Dr. Dieter Weber und Dipl.-Phys. Klaus Seiffert
Patentanwälte
Gustav-Freytag-Strasse 25
Postfach 6145
D-6200 Wiesbaden 1

Respondents :
(Proprietor of the patent)

Astral Société de Peintures et Vernis
164, Rue Ambroise Croizart
F-93204 Saint-Denis

Representative :

Sieders, René
AKZO N.V.
Patent Department (Dept. Co)
P.O. Box 9300
NL-6800 SB Arnhem
The Netherlands

Decision under appeal :

Decision of the Opposition Division of the European
Patent Office of 13 December 1988 posted on
11 January 1989 rejecting the opposition filed
against European patent No. 083 139 pursuant to
Article 102(2) EPC.

Composition of the Board :

Chairman : K. Jahn
Members : R. Spangenberg
W. Moser

Summary of Facts and Submissions

European patent No. 0 083 139, granted in respect of European patent application No. 82 201 648.1, was opposed by two parties. The opposition division rejected the oppositions and both parties appealed. During the appeal proceedings the proprietor of the patent withdrew his approval of the text in which the patent was granted but did not submit an amended text. By an interlocutory decision dated 6 May 1991 the Board revoked the patent. However, in view of a question of law arising from the decision T 73/88 - 3.3.1 of 7 November 1989 (for Headnotes see OJ EPO 1990/05), which has been referred to the Enlarged Board of Appeal by the decision T 604/89 - 3.4.2 of 15 March 1991 (to be published in the OJ EPO), the Board deferred the decision whether or not one of the two appeal fees should be refunded. By its decision G 2/91 of 29 November 1991 (to be published in the OJ EPO) the Enlarged Board decided that no appeal fee can be refunded for the only reason that there was already another appeal in existence.

Reasons for the Decision

Since it is now clear from the decision G 2/91 of the Enlarged Board of Appeal that there was a valid ground for the payment of the appeal fee by Appellant II as well, the appeal fee paid by the latter is not refunded.

Order

For these reasons, it is decided that:

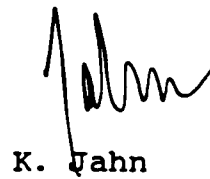
The appeal fee paid by Appellant II shall not be refunded.

The Registrar:



E. Görgmäler

The Chairman:



K. Jahn

W. N. 58/

01287

Publication in the Official Journal	Yes / No
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File Number: T 134/89 - 3.3.1
Application No.: 82 201 648.1
Publication No.: 083 139
Title of invention: A process for coating a substrate with a liquid coating composition
Classification: C09D 3/70

Interlocutory
D E C I S I O N
of 6 May 1991

Proprietors of the patent: Astral Société de Peintures et Vernis

Opponents: 01 Hüls AG
02 Schramm Lacke GmbH

EPC Article 111(1)

Keyword: "Revocation of European patent as consequence of patentee stating
"We withdraw approval of the text in which the patent was
granted."

Headnote



Case Number : T 134/89 - 3.3.1

Interlocutory
D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 6 May 1991

Appellants :
(Opponent)

01 Hüls AG
Postfach 1320
D-4370 Marl 1

02 Schramm Lacke GmbH
Kettelerstrasse 100
D-6050 Offenbach

Representative :

Weber, Dieter, Dr.
Dr. Dieter Weber und Dipl.-Phys. Klaus Seiffert
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Postfach 6145
D-6200 Wiesbaden 1

Respondents :
(Proprietor of the patent)

Astral Société de Peintures et Vernis
164, Rue Ambroise Croizart
F-93204 Saint-Denis

Representative :

Sieders, René
AKZO N.V.
Patent Department (Dept. Co)
P.O. Box 9300
NL-6800 SB Arnhem
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Decision under appeal :

Decision of the Opposition Division of the European
Patent Office of 13 December 1988 posted on
11 January 1989 rejecting the opposition filed
against European patent No. 083 139 pursuant to
Article 102(2) EPC.

Composition of the Board :

Chairman : K. Jahn
Members : R. Spangenberg
W. Moser

Summary of Facts and Submissions

- I. In a decision dated 13 December 1989, with written reasons posted on 11 January 1989, the Opposition Division rejected two oppositions filed against European patent No. 0 083 139 granted upon the subject-matter of European patent application No. 82 201 648.1.
- II. On 22 February 1989 Appellant I, Schramm Lacke GmbH (Opponent II) and on 3 March 1989 Appellant II, Hüls AG (Opponent I) appealed against this decision and paid the appropriate fees on the respective dates. Statements of Grounds were filed on 13 May and 2 May 1989 in which the Appellants requested that the patent be revoked.
- III. In a letter dated 14 January 1991 the representative of the Respondent (proprietors of the patent) stated "... proprietor hereby confirms withdrawing approval of the text in which the patent was granted".

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. The Respondents made it clear through their representative that they no longer approve of the text in which the patent was granted. Since they did not submit an amended text on which further prosecution of the appeal could be based, the patent must be revoked (see Decision T 73/84, OJ EPO 1985, 241).

3. The question whether or not the appeal fee paid by Appellant II (Opponent I) was paid for a right which the party concerned already possessed and should, therefore, be refunded (see the decision Snackfood/HOWARD, T 73/88 of 2 November 1989, paragraph 1.2 of the reasons; for Headnote see OJ EPO 1990/05) is a question of law referred to the Enlarged Board of Appeal by another Technical Board of Appeal (see Interlocutory Decision T 604/89 of 15 March 1991 (to be published in the OJ EPO)).

It is therefore appropriate to decide this question here only after the Enlarged Board of Appeal has made its decision regarding the above question of law.

Order :

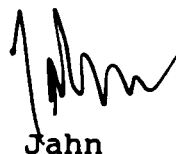
For these reasons, it is decided that:

1. The decision of the Opposition Division is set aside.
2. The patent is revoked.
3. The decision concerning the possibility of refunding the appeal fee paid by Appellant II is deferred until the Enlarged Board of Appeal has made its decision on this point of law.

The Registrar:


E. Görgmaier

The Chairman:


K. Jahn