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D E C I S I O N
of 30 June 2003

Case Number: T 0601/98 - 3.3.7

Application Number: 88308984.9

Publication Number: 0311293

IPC: B32B 27/32

Language of the proceedings: EN

Title of invention:

Biaxially oriented multilayer barrier films

Patentee:

EXXONMOBIL OIL CORPORATION

Opponent:

Brückner-Maschinenbau Gernot Brückner GmbH & Co. KG
W.R. GRACE & CO. - CONN

Headword:

-

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Basis of decision - patentee (non agreement of)"

Decisions cited:

-

Catchword:

-



Case Number: T 0601/98 - 3.3.7

D E C I S I O N
of the Technical Board of Appeal 3.3.7
of 30 June 2003

Appellant:
(Opponent 02)

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Party as of right:
(Opponent 01)

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Respondent:
(Proprietor of the patent)

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Decision under appeal:

**Interlocutory decision of the Opposition Division
of the European Patent Office posted 15 April
1998 concerning maintenance of European patent
No. 0 311 293 in amended form.**

Composition of the Board:

Chairman: R. E. Teschemacher
Members: B. L. ter Laan
G. Santavicca

Summary of Facts and Submissions

- I. In its interlocutory decision posted on 15 April 1998 the Opposition Division of the European Patent Office found that European patent No. 0 311 293 could be maintained in amended form.
- II. On 12 June 1998 opponent 02 (appellant) lodged an appeal against that decision and paid the corresponding fee on the same day. A statement of grounds of appeal was filed on 20 August 1998.
- III. In a letter dated 10 June 2003 the proprietor's (respondent's) representative stated that the proprietor no longer approved the text of the patent and that the national patents were being abandoned by non-payment of annuities.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. In accordance with Article 113(2) EPC, the EPO can maintain the patent only in the text agreed by the proprietor of the patent. Agreement cannot be held to be given if the proprietor, without submitting an amended text, expressly states that he no longer approves the text of the patent as granted or previously amended. In such a situation 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 (Case Law of the Boards of Appeal, 4th edition 2001, V11D.11.3, page 540 of the English version).

Order

For these reasons it is decided that:

1. The decision of the Opposition Division dated 15 April 1998 is set aside.
2. European patent No. 0 311 293 is revoked.

The Registrar:

The Chairman:

C. Eickhoff

R. E. Teschemacher