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**Datasheet for the decision
of 21 September 2006**

Case Number: T 0612/00 - 3.3.07

Application Number: 89123166.4

Publication Number: 0373655

IPC: D01F 1/04

Language of the proceedings: EN

Title of invention:

Stain-resistant, pigmented nylon fibers and processes for making such fibers

Patentee:

E.I. DU PONT DE NEMOURS AND COMPANY

Opponents:

RHODIA PERFORMANCE FIBRES
BASF Aktiengesellschaft

Headword:

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Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Agreement to text of the patent withdrawn - revocation"

Decisions cited:

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Catchword:

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Case Number: T 0612/00 - 3.3.07

D E C I S I O N
of the Technical Board of Appeal 3.3.07
of 21 September 2006

Appellants:

(Opponent 01)

RHODIA PERFORMANCE FIBRES
Avenue de l'Ermitage
F-62053 Saint Laurent Blangy (FR)

Representative:

Esson, Jean-Pierre
Rhodia Services,
Direction de la Propriété Industrielle,
Centre de Recherches de Lyon
BP 62
85, avenue des Frères Perret
F-69192 Saint-Fons Cédex (FR)

(Opponent 02)

BASF Aktiengesellschaft
Patente, Marken und Lizenzen
D-67056 Ludwigshafen (DE)

Representative:

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Respondent:

(Patent Proprietor)

E.I. DU PONT DE NEMOURS AND COMPANY
1007 Market Street
Wilmington, DE 19898 (US)

Representative:

Morf, Jan Stefan
Patentanwälte Abitz und Partner
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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 18 April 2000
rejecting the oppositions filed against
European patent No. 0373655 pursuant to Article
102(2) EPC.**

Composition of the Board:

Chairman: S. Perryman
Members: F. Rousseau
B. Ter Laan

Summary of Facts and Submissions

- I. In a decision posted on 18 April 2000 the Opposition Division rejected the oppositions filed against European patent No. 0 373 655.
- II. On 15 June 2000 opponent 01 (appellant 01) lodged an appeal against that decision and paid the corresponding fee on the same day. A statement setting out the grounds of appeal was filed on 24 August 2000.

On 16 June 2000 opponent 02 (appellant 02) lodged an appeal against that decision as well and paid the corresponding fee on the same day. An opponent's statement setting out the grounds of appeal was filed on 3 August 2000.

- III. In reply to the summons to oral proceedings and the communication of the Board of 19 June 2006, the respondent's (proprietor's) representative stated by letter dated 21 August 2006, that agreement to the version proposed for grant of the patent was withdrawn. An amended version was not submitted.

Reasons for the Decision

1. The appeals are 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 withdraws agreement to the text

of the patent as granted and maintained by the first instance. 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, VII.D.11.3, page 540 of the English version).

Order

For these reasons it is decided that:

1. The decision of the Opposition Division dated 18 April 2000 is set aside.
2. European patent No. 0 373 655 is revoked.

The Registrar:

The Chairman:

C. Eickhoff

S. Perryman