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D E C I S I O N
of 22 October 2004

Case Number: T 0215/02 - 3.2.7

Application Number: 94117033.4

Publication Number: 0650803

IPC: B24B 7/24

Language of the proceedings: EN

Title of invention:
Method for the polishing and finishing of optical lenses

Applicant:
MINNESOTA MINING AND MANUFACTURING COMPANY

Opponent:
Norton Company

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Lack of approval with text of patent; revocation of the European patent"

Decisions cited:
T 0073/84

Catchword:
-

Case Number: T 0215/02 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 22 October 2004

Appellant: (Opponent)	Norton Company One New Bond Street P.O. Box 15008 Worcester, MA 01615-0008 (US)
Representative:	Diehl, Hermann, Dr. DIEHL, GLÄSER, HILTL & PARTNER, Augustenstrasse 46 D-80333 München (DE)
Respondent: (Proprietor of the patent)	MINNESOTA MINING AND MANUFACTURING COMPANY 3M Center, P.O. Box 33427 St. Paul, MN 55133-3427 (US)
Representative:	VOSSIUS & PARTNER Postfach 86 07 67 D-81634 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted 19 December 2001 rejecting the opposition filed against European patent No. 0650803 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: A. Burkhart
Members: H. E. Felgenhauer
E. Lachacinski

Summary of Facts and Submissions

I. The appellant (opponent) filed an appeal against the decision of the Opposition Division rejecting the opposition against European patent No. 0 650 803.

Opposition has been filed against the patent as a whole based on the grounds of opposition according to Article 100(a) EPC (lack of novelty and of inventive step) and Article 100(b) EPC (insufficiency of disclosure).

II. With letter dated 12 October 2004 the respondent (patent proprietor) declared that the text in which the patent has been granted is no longer approved and that an amended text will not be submitted. The respondent further requested the proceedings to be terminated.

The appellant requested the decision of the Opposition Division to be set aside and the patent be revoked.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.

2. During the appeal proceedings the respondent withdrew his approval of the text of the patent as granted, further indicating that an amended text will not be submitted.

3. Therefore no text of the patent exists on the basis of which the Board can consider the appeal, since

according to Article 113(2) EPC the European Patent Office must consider the European patent only in the text submitted to it, or agreed by, the proprietor of the patent.

4. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will. If the patent proprietor withdraws his approval of the text of the patent as granted and declares that he will not be submitting an amended text, it may be inferred that he wishes to prevent any text whatever of the patent from being maintained.

5. The appeal proceedings has thus to be terminated by revoking the patent (cf. T 73/84).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Nachtigall A. Burkhart