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**Datasheet for the decision  
of 18 September 2012**

**Case Number:** T 1831/09 - 3.3.09

**Application Number:** 99920634.5

**Publication Number:** 1084034

**IPC:** B32B 27/32, B32B 27/28,  
B65D 65/40, C08L 25/10

**Language of the proceedings:** EN

**Title of invention:**  
Multilayer packaging film and bag made therefrom

**Patentee:**  
Cryovac, Inc.

**Opponent:**  
LUDWIG, Gabriele

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
"Non-approval of the granted or amended text of the patent by  
patentee: revocation of the patent"

**Decisions cited:**  
T 0073/84, T 0725/06, T 1042/07

**Catchword:**  
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Case Number: T 1831/09 - 3.3.09

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.09  
of 18 September 2012

**Appellant I:**  
(Patent Proprietor) Cryovac, Inc.  
100 Rogers Bridge Road  
Building A  
Duncan, SC 29334-0464 (US)

**Representative:** Franck, Peter  
Uexküll & Stolberg  
Patentanwälte  
Beselerstrasse 4  
D-22607 Hamburg (DE)

**Appellant II:**  
(Opponent) LUDWIG, Gabriele  
Nadisstrasse 31  
D-80809 München (DE)

**Representative:** Isarpatent  
Patent- und Rechtsanwälte  
Postfach 44 01 51  
D-80750 München (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
2 July 2009 concerning maintenance of European  
patent No. 1084034 in amended form.

**Composition of the Board:**

**Chairman:** W. Sieber  
**Members:** W. Ehrenreich  
F. Blumer

## Summary of Facts and Submissions

- I. In its interlocutory decision posted on 2 July 2009 the Opposition Division decided that the European patent No. 1 084 034 as amended met the requirements of the EPC.
- II. On 10 September 2009 the patent proprietor (appellant 01) filed an appeal and paid the prescribed fee on the same day. A statement setting out the grounds of appeal was filed on 11 November 2009. Oral proceedings were requested by appellant 01 in his notice of appeal on auxiliary basis and maintained in the statement setting out the grounds of appeal.
- III. On 11 September 2009 also the opponent (appellant 02) filed an appeal and paid the prescribed fee on the same day. A statement setting out the grounds of appeal was filed on 30 October 2009. Appellant 02 requested that the appealed decision be set aside and the patent be revoked in its entirety. Oral proceedings were requested on an auxiliary basis.
- IV. The appellants responded to the statements setting out the grounds of appeal on 22 March 2010 and 26 March 2010 respectively.
- V. The summons to attend oral proceedings were issued on 13 February 2012 pursuant to Rule 115(1) EPC. Following a communication of the board posted on 9 August 2012 appellant 01 stated by letter dated 17 August 2012:  
"The patent proprietor no longer approves the text of the patent as granted or in accordance with any of the

amendments proposed during the opposition and appeal proceedings."

VI. On 6 September 2012 the oral proceedings scheduled to take place on 18 September 2012 were cancelled.

### **Reasons for the Decision**

1. The appeals are admissible.
2. Article 113(2) EPC requires that the EPO may decide upon the European 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 amended during opposition and appeal proceedings. 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 consideration of any further issues (e.g. T 73/84, OJ EPO 1985, 241).
3. In a situation where the patent has to be revoked, the request for oral proceedings filed by appellant 02 (opponent) is obsolete because the decision is fully in line with the request of appellant 02 (see, e.g., T 725/06).
4. Appellant 01 (patent proprietor) has not explicitly withdrawn his request for oral proceedings. However, in the specific circumstances of the present case, where the patent proprietor has decided not to defend his

patent any longer in appeals proceedings but to file a statement that necessarily leads to the revocation of the patent, the board considers the earlier requests for oral proceedings to have become obsolete as a consequence of the subsequent course of action taken. The patent proprietor's statement that he no longer approves the (granted or amended) text of the patent is considered to be equivalent to an abandonment of the request for oral proceedings (see T 1042/07). Consequently, the oral proceedings were cancelled.

## **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. Röhn

W. Sieber