

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 29 August 2012**

Case Number: T 0545/10 - 3.3.01

Application Number: 99909417.0

Publication Number: 1073646

IPC: C07D 251/62

Language of the proceedings: EN

Title of invention:
CRYSTALLINE MELAMINE

Patent proprietor:
OCI Nitrogen B.V.

Opponent:
Borealis Agrolinz Melamine GmbH

Headword:

-

Relevant legal provisions:
EPC Art. 113(2)

Relevant legal provisions (EPC 1973):

-

Keyword:
"No text agreed by patentee - revocation of the patent"

Decisions cited:
T 0073/84, T 0186/84, T 0157/85, T 1655/07

Catchword:

-



Case Number: T 0545/10 - 3.3.01

D E C I S I O N
of the Technical Board of Appeal 3.3.01
of 29 August 2012

Appellant:
(Opponent)

Borealis Agrolinz Melamine GmbH
St. Peter-Straße 25
4021 Linz (AT)

Representative:

Morawski, Birgit
Patentanwälte Maikowski & Ninnemann
Postfach 15 09 20
10671 Berlin (DE)

Respondent:
(Patent proprietor)

OCI Nitrogen B.V.
Mijnweg 1
6167 AC Geleen (NL)

Representative:

van Hazendonk, Johanna Maria
Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
14 January 2010 concerning maintenance of the
European patent No. 1 073 646 in amended form.

Composition of the Board:

Chairman: P. Ranguis
Members: L. Seymour
C.-P. Brandt

Summary of Facts and Submissions

I. This decision concerns the appeal by the opponent (Borealis Agrolinz Melamine GmbH) against the interlocutory decision of the opposition division (posted 14 January 2010) that European patent No. 1 073 646 as amended met the requirements of the EPC.

II. On 4 March 2010, the appellant (opponent) filed a notice of appeal against the above decision and paid the prescribed fee on the same day. A statement setting out the grounds of appeal was filed on 12 May 2010.

The appellant requested that the decision under appeal be set aside and the patent be revoked in its entirety.

III. With letter of 2 November 2010, the respondent (proprietor) filed a response to the appeal.

IV. By letter of 27 August 2012, the respondent stated the following:

"Proprietor herewith withdraws all requests as filed with Proprietor's letter dated 2 November 2010.

Moreover, Proprietor no longer approves the text in which the patent was granted and Proprietor no longer approves the text in which the patent was maintained at the oral proceedings dated 9 September 2009.

We assume that this will terminate the opposition proceedings with immediate effect".

Reasons for the Decision

1. The appeal is admissible.
2. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or 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 (see eg decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 157/85 of 12 May 1986, not published in OJ EPO; and T 1655/07 of 10 June 2009, equally not published in OJ EPO).

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

M. Schalow

P. Ranguis