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**Datasheet for the decision
of 13 January 2014**

Case Number: T 2536/10 - 3.3.01

Application Number: 99932266.2

Publication Number: 1056819

IPC: C10M137/02, C10M141/10,
C10M163/00, C10M167/00, //
(C10M141/10, 135:02, 135:04,
135:06, 135:22, 135:28, 137:02,
137:06, 137:08, 137:10,
137:10), (C10M163/00, 135:02,
135:04, 135:06, 135:22, 135:28,
137:02, 137:06, 137:08,
159:12), C10N30:12, C10N40:04,
C10N60:14

Language of the proceedings: EN

Title of invention:
MIXED PHOSPHORUS COMPOUNDS AND LUBRICANTS CONTAINING THE SAME

Patent Proprietor:
The Lubrizol Corporation

Opponent:
New Market Services Corporation

Headword:
-

Relevant legal provisions:
EPC R. 84(1), 100(1)

Keyword:

Surrender of patent in all designated states - continuation of appeal proceedings (no)

Decisions cited:

T 0708/01, G 0002/97, R 0004/09

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 2536/10 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 13 January 2014

Appellant: The Lubrizol Corporation
(Patent Proprietor) 29400 Lakeland Boulevard
Wickliffe, Ohio 44092-2298 (US)

Representative: Mallalieu, Catherine Louise
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120 Holborn
London EC1N 2DY (GB)

Respondent: New Market Services Corporation
(Opponent) 330 South Forth Street
Richmond, VA 23219 (US)

Representative: Haase, Wilm-Christian
Schwabe, Sandmair, Marx
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 October 2010
revoking European patent No. 1056819 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman: A. Lindner
Members: L. Seymour
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division posted on 21 October 2010, by which European patent No. 1 056 819 was revoked.
- II. By communication of the board of 10 May 2013, the parties' attention was drawn to the fact that the patent had meanwhile lapsed in all designated contracting states, and the appellant was asked to inform the board whether it requested a continuation of the appeal proceedings.
- III. The appellant did not reply within the time limit of two months. Upon inquiry by the registrar, the appellant informed the board that it had not received the communication. The communication was sent a second time to the appellant on 6 September 2013, in order to ascertain that it was duly notified to the parties.
- IV. With letter received on 6 September 2013, the appellant confirmed that the patent had been allowed to lapse in all designated states. It did not request a continuation of the appeal proceedings. No further reply was received.

Reasons for the Decision

1. If a European patent has lapsed in all designated contracting states, opposition proceedings may be continued at the request of the opponent (Rule 84(1) EPC). According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition proceedings. However, if, as in the present case, the patent

proprietor is the appellant, it would be inappropriate to allow the opponent(s) (respondent(s)) to decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied *mutatis mutandis* in such opposition appeal proceedings so that it is the patent proprietor who can request that the appeal proceedings be continued (see decision T 708/01 of 17 March 2005, point 1 of the Reasons).

2. Users of the European patent system have the responsibility to take all necessary steps to avoid a loss of rights (G 2/97, OJ EPO 1999, 123, point 4.2 of the Reasons; R 4/09 of 30 April 2010, point 2.3.2 of the Reasons). In its reply of 6 September 2013, the appellant confirmed that the patent had been allowed to lapse in all designated states, but did not file any requests with respect to the continuation of appeal proceedings. This is interpreted as meaning that the appellant did not wish to request continuation. Under these circumstances, the board sees no reason to continue the appeal proceedings of its own motion. Therefore, the appeal proceedings are terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated