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**Datasheet for the decision
of 8 September 2017**

Case Number: T 0700/14 - 3.3.06

Application Number: 04007088.0

Publication Number: 1437174

IPC: B01D3/06, B01J19/18, B01J19/24,
B01J8/00, C08F6/00, B01J8/38,
C08F6/24, C08F10/00,
C08F210/14, C08F210/16

Language of the proceedings: EN

Title of invention:
Continuous slurry polymerisation volatile removal

Patent Proprietor:
CHEVRON PHILLIPS CHEMICAL COMPANY LP

Opponent:
Total Research & Technology Feluy

Headword:
Volatile removal / CHEVRON

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Withdrawal of the Proprietor's approval of the text of the patent - patent revoked without consideration of patentability

Decisions cited:

G 0009/92, T 0073/84, T 0186/84

Catchword:



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Case Number: T 0700/14 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 8 September 2017

Appellant: CHEVRON PHILLIPS CHEMICAL COMPANY LP
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Appellant: Total Research & Technology Feluy
(Opponent) Zone Industrielle C
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Representative: Garcia Martin, Margarita
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
24 January 2014 concerning maintenance of the
European Patent No. 1437174 in amended form.

Composition of the Board:

Chairman B. Czech
Members: M. Maremonti
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. Appeals were filed by both the Patent Proprietor and the Opponent against the interlocutory decision of the Opposition Division concerning maintenance of the European patent No. 1 437 174 in amended form.
- II. In its statement of grounds, the Patent Proprietor requested that the decision under appeal be set aside and the case be remitted to the Opposition Division for consideration of sufficiency of disclosure, novelty and inventive step in respect of the Main Request that had been refused under Article 123(2) EPC. In the event that the Board did not wish to remit the case, it requested that the opposition be rejected and the patent be maintained as granted (main request) or, if that was not possible, on the basis of the claims according to one of auxiliary requests 1 to 11 filed with its statement of grounds of appeal. Auxiliary request 5 corresponded to the version considered to be allowable in the contested decision.
- III. The Opponent requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- IV. The parties were summoned to oral proceedings and the Board issued a communication in preparation therefor.
- V. By letter dated 16 August 2017, the Patent Proprietor expressly withdrew its appeal as well as its request for oral proceedings. It also stated the following:
"The proprietor also withdraws its approval of the text of the patent. The Proprietor understands that this will lead to the revocation of the patent and the cancellation of the oral proceedings".

VI. By a communication dated 28 August 2017, the Board informed the Patent Proprietor that 50% of its appeal fee will be reimbursed according to Rule 103(2)(a) EPC.

Reasons for the Decision

1. The Patent Proprietor withdrew its appeal, thereby remaining Respondent to the appeal by the Opponent and being primarily restricted to defending the patent in the form held allowable by the Opposition Division (G9/92, OJ 1994, 875, Order, 2, and Reasons, 16).
2. However, the Patent Proprietor not only withdrew its appeal, but also "its approval of the text of the patent" and indicated that it "understands that this will lead to the revocation of the patent".
3. Article 113(2) EPC stipulates that the European Patent Office must consider and decide upon the European patent "only in the text submitted to it, or agreed, by the ... Proprietor of the patent".
4. This principle has to be strictly observed also in opposition appeal proceedings. Since the text of the patent is at the disposition of the Patent Proprietor, a patent cannot be maintained against the Patent Proprietor's will.
5. In the present case, the Proprietor's statement that it "understands that this will lead to the revocation of the patent" must without any doubt be equated to a request that its patent be revoked (see e.g. decision T 73/84, OJ 1985, 241, Reasons, 2 to 5).
6. Accordingly, the withdrawal of "its approval of the text of the patent" is understood as an unambiguous

indication of the Patent Proprietor that it does no longer approves the text of the patent according to any of its currently still pending requests, and that it does not intend to submit any other amended version.

7. Consequently, the patent is to be revoked without considering patentability (see e.g. decision T 186/84, OJ 1986, 79, Reasons, 5).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent is revoked.

The Registrar:

The Chairman:



D. Magliano

B. Czech

Decision electronically authenticated