

Internal distribution code:

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

**Datasheet for the decision
of 23 January 2019**

Case Number: T 0412/15 - 3.3.10

Application Number: 03774969.4

Publication Number: 1558691

IPC: C09K3/18

Language of the proceedings: EN

Title of invention:
BIOBASED DEICING/ANTI-ICING FLUIDS

Patent Proprietor:
BATTELLE MEMORIAL INSTITUTE

Opponent:
Clariant Produkte (Deutschland) GmbH

Headword:

Relevant legal provisions:
EPC Art. 113(2)
EPC R. 103(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/04, T 0186/84, T 0655/01, T 1526/06, T 2405/12

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0412/15 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 23 January 2019

Appellant: BATTELLE MEMORIAL INSTITUTE
(Patent Proprietor) 505 King Avenue
Columbus, OH 43201-2693 (US)

Representative: Haseltine Lake LLP
Redcliff Quay
120 Redcliff Street
Bristol BS1 6HU (GB)

Respondent: Clariant Produkte (Deutschland) GmbH
(Opponent) Group Intellectual Property
Am Unisys-Park 1
65843 Sulzbach (DE)

Representative: Mikulecky, Klaus
Clariant Produkte (Deutschland) GmbH
Patent & License Management Chemicals
Industriepark Höchst, G 860
65926 Frankfurt am Main (DE)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
19 December 2014 concerning maintenance of the
European Patent No. 1558691 in amended form.

Composition of the Board:

Chairman P. Gryczka
Members: R. Pérez Carlón
F. Blumer

Summary of Facts and Submissions

- I. The appeals lie from the decision of the opposition division which resulted in European patent No. 1 558 691 being maintained in amended form.
- II. With a letter dated 7 January 2019, the appellant-patent proprietor stated that it no longer approved of the text upon which the patent was granted, nor of the request upon which the patent was maintained by the opposition division nor any of the auxiliary requests on file. The appellant-patent proprietor understood that the patent would be revoked without substantive examination.
- III. The appellant-opponent requested that the decision under appeal be set aside and the patent revoked.

Reasons for the Decision

1. The appeal is admissible.
2. During these appeal proceedings, the appellant-patent proprietor withdrew its approval of the text of the patent as granted and as maintained after opposition proceedings. It further withdrew all its auxiliary requests.

Under Article 113(2) EPC, the European Patent Office must consider a European patent only in the text submitted to it, or agreed by the proprietor of the patent. There is, however, no text of the patent on the basis of which the board can consider this appeal.

3. 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 a patent proprietor withdraws its approval of the text of the patent as granted and of the text in which the patent was maintained and withdraws every other request on file, and requests revocation of the patent in suit, it wishes to prevent any text whatever of the patent from being maintained.

4. In the case of T 73/84 (OJ EPO 1985, 241, Headnote and Reasons), the board decided that, if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 655/01 (not published in OJ EPO), T 1526/06 (not published in OJ EPO) and T 2405/12 (not published in OJ EPO).
5. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out in the above-mentioned decisions. The patent must therefore be revoked without going into any substantive issue.

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:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated