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**Datasheet for the decision  
of 12 September 2019**

**Case Number:** T 0939/15 - 3.3.01

**Application Number:** 08172107.8

**Publication Number:** 2138189

**IPC:** A61K45/06, A01N43/80,  
A01N25/30, A01N37/02

**Language of the proceedings:** EN

**Title of invention:**  
Synergistic microbicidal compositions

**Patent Proprietor:**  
Rohm and Haas Company

**Opponent:**  
Thor GmbH

**Headword:**  
Synergistic microbicidal compositions/ROHM and HAAS

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

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Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0939/15 - 3.3.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.01**  
**of 12 September 2019**

**Appellant I:** Rohm and Haas Company  
(Patent Proprietor) 100 Independence Mall West  
Philadelphia, PA 19106-2399 (US)

**Representative:** Houghton, Mark Phillip  
Patent Outsourcing Limited  
1 King Street  
Bakewell, Derbyshire DE45 1DZ (GB)

**Appellant II:** Thor GmbH  
(Opponent) Landwehrstrasse 1  
67346 Speyer (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
20 March 2015 concerning maintenance of the  
European Patent No. 2138189 in amended form.

**Composition of the Board:**

**Chairman** A. Lindner  
**Members:** M. Pregetter  
P. de Heij

## **Summary of Facts and Submissions**

- I. Appeals were lodged both by the patent proprietor (appellant 1) and by the opponent (appellant 2) against the interlocutory decision of the opposition division concerning maintenance of European patent No. 2 138 189 in amended form.
- II. Appellant 1 has requested to set aside the impugned decision and to maintain the patent on the basis of the main request, or alternatively on the basis of any of the auxiliary requests 1 to 7, all filed with the statement setting out the grounds of appeal. With letter dated 27 January 2016, auxiliary requests 8 to 10 were submitted.
- III. Appellant 2 has requested to set aside the impugned decision and to revoke the patent.
- IV. The board issued a summons to oral proceedings.
- V. With letter dated 7 August 2019, appellant 1 withdrew its appeal.
- VI. With letter dated 16 August 2019, appellant 1 withdrew its approval of the text to the patent as granted. It also withdrew all requests on file, including all auxiliary requests and its request for oral proceedings. It indicated that it expected the board to cancel the oral proceedings scheduled for 17 September 2019 and to revoke the patent.
- VII. Oral proceedings were canceled and the proceedings continued in writing.

## **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
2. Appellant 1 no longer approves the text in which the patent was granted and has withdrawn all pending claim requests.
3. Therefore, there is no longer any text of the patent in the proceedings on the basis of which the board can consider the appeal. It is established case law that in these circumstances the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition 2016, section IV.C.5.2).

## **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

A. Lindner

Decision electronically authenticated