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**Datasheet for the decision
of 14 January 2019**

Case Number: T 1405/16 - 3.3.10

Application Number: 06849866.6

Publication Number: 1951648

IPC: C07C17/00, C07C17/21, C07C17/23

Language of the proceedings: EN

Title of invention:
DIRECT CONVERSION OF HCFC 225CA/CB MIXTURE TO HFC 245CB AND
HFC 1234YF

Patent Proprietor:
Honeywell International Inc.

Opponent:
Arkema France

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Basis of decision - text or agreement to text withdrawn by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 0073/84, T 0186/84, T 0655/01, T 1526/06, T 2405/12

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 1405/16 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 14 January 2019

Appellant: Arkema France
(Opponent) DRD/Département Propriété Industrielle
420, rue d'Estienne d'Orves
92705 Colombes Cedex (FR)

Representative: Dang, Doris
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Respondent: Honeywell International Inc.
(Patent Proprietor) 115 Tabor Road
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Representative: Crooks, Elizabeth Caroline
Kilburn & Strode LLP
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 April 2016 concerning maintenance of the
European Patent No. 1951648 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal lies from the decision of the opposition division which resulted in European patent No. 1 951 648 being maintained in amended form.

- II. With a letter dated 15 November 2018, the respondent (patent proprietor) stated that the patent proprietor no longer approved the text upon which the patent was granted, nor of the main request upon which the patent was maintained by the opposition division or the auxiliary requests 1 to 8 filed with a letter dated 3 January 2017. The respondent understood that the patent would be revoked and the already scheduled oral proceedings cancelled.

- 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 respondent withdrew its approval of the text of the patent as granted and as maintained after opposition proceedings. It further withdrew its auxiliary requests 1 to 8.

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, 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