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**Datasheet for the decision  
of 31 March 2021**

**Case Number:** T 0660 / 18 - 3.3.02

**Application Number:** 08726071.7

**Publication Number:** 2124577

**IPC:** A01P13/00, A01N25/00,  
A01N39/02, A01N39/04,  
A01N37/40, A01N43/40

**Language of the proceedings:** EN

**Title of invention:**

COMPOUNDS DERIVED FROM HERBICIDAL CARBOXYLIC ACIDS AND  
TETRAALKYLMONIUM OR (ARYLALKYL) TRIALKYLMONIUM HYDROXIDES

**Patent Proprietor:**

Dow AgroSciences LLC

**Opponent:**

Nufarm Australia Limited

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor / revocation requested by patent proprietor  
- patent revoked

**Decisions cited:**

T 0073/84, T 0186/84

**Catchword:**



## Beschwerdekkammern

## Boards of Appeal

## Chambres de recours

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0660/18 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 31 March 2021**

**Appellant:** Nufarm Australia Limited  
(Opponent)  
103 - 105 Pipe Road  
Laverton North Victoria 3026 (AU)

**Representative:** Von Rohr Patentanwälte Partnerschaft mbB  
Rüttenscheider Straße 62  
45130 Essen (DE)

**Respondent:** Dow AgroSciences LLC  
(Patent Proprietor)  
9330 Zionsville Road  
Indianapolis IN 46268-1054 (US)

**Representative:** Weickmann & Weickmann PartmbB  
Postfach 860 820  
81635 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 2 January 2018 rejecting the opposition filed against European patent No. 2124577 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** A. Lenzen  
P. de Heij

## **Summary of Facts and Submissions**

- I. This decision concerns the appeal filed by the opponent (appellant) against the decision of the opposition division (decision under appeal) to reject the opposition against European patent no. 2 124 577 (patent in suit).
- II. During the oral proceedings before the board on 31 March 2021, the patent proprietor (respondent) withdrew the approval of the text of the granted patent in suit and of all claim requests on file. It also requested that the patent in suit be revoked. At the end of the oral proceedings, the chair announced the order of the present decision.
- III. The parties' requests relevant for this decision were as follows.

The appellant requested that the decision under appeal be set aside and that the patent in suit be revoked in its entirety.

The respondent requested that the patent in suit be revoked.

## **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC the European Patent Office examines, and decides 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. The respondent no longer approves the text in which the patent was granted and has withdrawn all pending claim requests. Therefore, there is no longer any text of the patent in the proceedings on the basis of which the board can consider compliance with the requirements of the EPC. The respondent even expressly requests that the patent in suit be revoked.
3. It is established case law that in the present circumstances the patent must be revoked without further substantive examination as to patentability (e.g. T 73/84, points 3 to 5 of the reasons; T 186/84, points 4 and 5 of the reasons). The board has no reason to deviate from this consistent approach of the boards of appeal, and so the patent is to be revoked.

### **Order**

#### **For these reasons it is decided that:**

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

The Registrar:

N. Maslin

The Chairman:

M. O. Müller



Decision electronically authenticated