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**Datasheet for the decision
of 15 October 2025**

Case Number: T 0438/19 - 3.3.03

Application Number: 11830390.8

Publication Number: 2626911

IPC: H01L31/042, C08F210/02,
C08K5/541, C08L23/08, C09K3/10,
C09D123/08

Language of the proceedings: EN

Title of invention:
SOLAR CELL SEALING MATERIAL, AND SOLAR CELL MODULE

Patent Proprietor:
Mitsui Chemicals, Inc.
Mitsui Chemicals ICT Materia, Inc.

Opponent:
Borealis GmbH

Relevant legal provisions:
EPC Art. 113(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Basis of decision - text or agreement to text withdrawn by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 0646/08, T 2434/18



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Boards of Appeal
Chambres de recours

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Case Number: T 0438/19 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 15 October 2025

Appellant:

(Opponent)

Borealis GmbH
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Representative:

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Respondent:

(Patent Proprietor 1)

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Respondent:

(Patent Proprietor 2)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 3 December 2018
rejecting the opposition filed against European
patent No. 2626911 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman D. Semino
Members: F. Rousseau
 A. Bacchin

Summary of Facts and Submissions

- I. The appeal of the opponent (appellant) lies against the decision of an opposition division rejecting the opposition filed against European patent No. 2 626 911.
- II. With interlocutory decision of 27 June 2023 the present Board referred questions of law to the Enlarged Board of Appeal. A decision on the referral bearing the reference number G 1/23 was issued on 2 July 2025.
- III. The Board summoned the parties to second oral proceedings as requested and informed them of its preliminary opinion in a communication pursuant to Article 15(1) RPBA. Oral proceedings before the Board took place on 15 October 2025.
- IV. During the oral proceedings, the respondent withdrew its consent and agreement under Article 113(2) EPC to the text of the patent as granted, and also withdrew all its pending requests.
- V. At the end of the oral proceedings, the Chairman announced the Board's decision.

Reasons for the Decision

1. According to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine and decide upon a European patent only in the text submitted to it, or agreed upon, by the proprietor of the patent.
2. As the respondent withdrew its approval of any text for the maintenance of the patent under appeal, there is no

approved text on the basis of which the Board could consider the appeal and examine whether a ground for opposition under Article 100 EPC prejudices the maintenance of the patent (T 186/84, point 5 of the Reasons; T 646/08, point 4 of the Reasons; T 2434/18, point 4 of the Reasons).

3. According to the case law of the Boards of Appeal, in such circumstances a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC, without going into the substantive issues. The patent proprietors no longer challenge the opponent's request for revocation of the opposed patent, in fact they even request the patent's revocation. The patent cannot be maintained against the proprietor's will (see e.g. decisions T 73/84, and Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, III.B.3.3 and IV.D.2).
4. There are no remaining issues that need to be dealt with by the Board in the present appeal case.

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:



D. Hampe

D. Semino

Decision electronically authenticated