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**Datasheet for the decision
of 21 March 2024**

Case Number: T 1870/19 - 3.2.06

Application Number: 13185894.6

Publication Number: 2679109

IPC: A41D19/015, A41D31/00,
A43B1/00, A62B17/00, D06M11/74,
D06M15/564, D06N3/00

Language of the proceedings: EN

Title of invention:
BURN PROTECTIVE MATERIALS COMPRISING EXPANDABLE GRAPHITE

Patent Proprietor:
W. L. Gore & Associates, Inc.

Opponent:
Schoeller Technologies AG

Headword:

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1870/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 21 March 2024

Appellant: Schoeller Technologies AG
(Opponent) Bahnhofstrasse 17
9475 Sevelen (CH)

Representative: Rentsch Partner AG
Kirchenweg 8
Postfach
8034 Zürich (CH)

Respondent: W. L. Gore & Associates, Inc.
(Patent Proprietor) 555 Paper Mill Road
Newark, DE 19711 (US)

Representative: HGF
HGF Limited
1 City Walk
Leeds LS11 9DX (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 April 2019
rejecting the opposition filed against European
patent No. 2679109 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Harrison
Members: M. Dorfstätter
W. Ungler

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the decision of the opposition division, in which it rejected the opposition against European patent No. 2 679 109.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. The respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained as granted (main request), or, as an auxiliary measure, that the patent be maintained in amended form based on one of auxiliary requests 1 to 10 as filed together with the reply to the statement of grounds of appeal.
- IV. The Board issued a summons to oral proceedings and a subsequent communication indicating its preliminary view on several issues of the case.
- V. During the oral proceedings the respondent withdrew its approval of any text for maintenance of the patent.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon a European patent only in the text submitted to it, or agreed, by the patent proprietor. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor states that it no longer approves any text for maintenance of the patent.

2. In such a case, there is no text of the patent on the basis of which the Board can consider the appeal. Under these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see e.g. Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.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:



D. Grundner

M. Harrison

Decision electronically authenticated