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**Datasheet for the decision  
of 29 September 2022**

**Case Number:** T 0411/20 - 3.3.02

**Application Number:** 11169890.8

**Publication Number:** 2420541

**IPC:** C09D151/08, B65D17/00

**Language of the proceedings:** EN

**Title of invention:**

Methods of coating a food or beverage can

**Patent Proprietor:**

SWIMC LLC

**Opponent:**

PPG Industries, Inc

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Text submitted or agreed by patent proprietor (no)

**Decisions cited:**

T 0073/84, T 0186/84, T 0798/90, T 0463/90, T 0014/99,  
T 1844/17, T 3007/18, T 0320/19

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0411/20 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 29 September 2022**

**Appellant:** SWIMC LLC  
(Patent Proprietor) 101 West Prospect Avenue  
Cleveland, Ohio 44115 (US)

**Representative:** Vossius & Partner  
Patentanwälte Rechtsanwälte mbB  
Siebertstrasse 3  
81675 München (DE)

**Appellant:** PPG Industries, Inc  
(Opponent) One PPG Place  
Pittsburgh PA 15272 (US)

**Representative:** Heiroth, Sebastian  
Fleischer, Engels & Partner mbB  
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Braunsberger Feld 29  
51429 Bergisch Gladbach (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
9 December 2019 concerning maintenance of the  
European Patent No. 2420541 in amended form.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** M. Maremonti  
L. Bühler

## **Summary of Facts and Submissions**

- I. The appeals by the patent proprietor and the opponent lie from the interlocutory decision of the opposition division, according to which European patent EP 2 420 541 ("the patent") in its form modified on the basis of the then pending first auxiliary request and the invention to which it relates meets the requirements of the EPC.
- II. In its statement of grounds of appeal, the patent proprietor requested that the appealed decision be set aside and that the patent be maintained as granted (main request). Alternatively, it requested that the patent be maintained in amended form on the basis of the claims of one of auxiliary requests 1 to 52, 1A to 52A, 1B to 52B, 1AB to 52AB, all the requests filed with the statement of grounds of appeal.
- III. In its statement of grounds of appeal, the opponent requested that the appealed decision be set aside and that the patent be revoked.
- IV. With its reply to the opponent's appeal, the patent proprietor introduced further auxiliary requests.
- V. The board summoned the parties to oral proceedings to be held on 16 May 2023.
- VI. By letter dated 17 August 2022, the patent proprietor withdrew its approval of the text of the granted patent. It also withdrew all auxiliary requests on file.
- VII. By communication dated 26 September 2022, the board cancelled the oral proceedings.

### **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Since the patent proprietor withdrew its approval of the text of the granted patent as well as all auxiliary requests on file there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the Boards of Appeal (see T 0073/84, OJ EPO 1985, page 241, T 0186/84, OJ EPO 1986, page 79, T 0798/90, T 0463/90, T 0014/99, T 1844/17, T 3007/18, T 0320/19) that under these circumstances the patent is to be revoked without further substantive examination. There are also no ancillary issues that would have to be dealt with by the board in the present case.

## Order

### For these reasons it is decided that:

1. The appealed decision is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated