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**Datasheet for the decision  
of 23 August 2023**

**Case Number:** T 0575/20 - 3.3.10

**Application Number:** 10797885.0

**Publication Number:** 2454339

**IPC:** C09K8/588, C09K8/58, C09K8/60,  
C09K8/28

**Language of the proceedings:** EN

**Title of invention:**  
METHOD OF REDUCING THE VISCOSITY OF HYDROCARBON FLUIDS

**Patent Proprietor:**  
Nalco Company

**Opponent:**  
Clariant Produkte (Deutschland) GmbH

**Headword:**

**Relevant legal provisions:**  
EPC Art. 113(2)  
EPC R. 84(1)

**Keyword:**

Lapse of patent in all designated states - continuation of  
appeal proceedings (yes)

Basis of decision - text or agreement to text withdrawn by  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 0575/20 - 3.3.10

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.10**  
**of 23 August 2023**

**Appellant:** Nalco Company  
(Patent Proprietor) 1601 West Diehl Road  
Naperville, IL 60563-1198 (US)

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

**Appellant:** Clariant Produkte (Deutschland) GmbH  
(Opponent) Industriepark Höchst / Geb. G 860  
65926 Frankfurt am Main (DE)

**Representative:** Mikulecky, Klaus  
Clariant Produkte (Deutschland) GmbH  
Patent & License Management Chemicals  
Industriepark Höchst, G 860  
65926 Frankfurt am Main (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
7 January 2020 concerning maintenance of the  
European Patent No. 2454339 in amended form.**

**Composition of the Board:**

**Chairman** P. Gryczka  
**Members:** M. Kollmannsberger  
L. Basterreix

## **Summary of Facts and Submissions**

- I. The Opposition Division's decision to maintain the patent in amended form was appealed by the patent proprietor as well as by the opponent.
- II. The patent proprietor withdrew its appeal on 16 September 2020. It stayed in the appeal proceedings as a party as of right under Article 107 EPC.
- III. In the course of the appeal proceedings the patent was surrendered or has lapsed in all designated states. The parties were informed of this situation and also that, pursuant to Rule 84(1) EPC, proceedings would be continued only upon request of the opponent.

Replying to this communication the opponent requested continuation of the proceedings.

- IV. The Board issued a communication under Article 100(2) EPC asking the parties to state their requests. The Board stressed in particular that, should the patent proprietor no longer approve the text of the patent in which it was granted and withdraw any further requests, the patent would be revoked without a decision on the merits.
- V. The opponent requested to set aside the appealed decision and to revoke the patent.
- VI. In a letter dated 18 August 2023 the patent proprietor declared to withdraw all pending requests, including its request for oral proceedings. The patent proprietor noted that this would lead to a revocation of the patent.

## **Reasons for the Decision**

1. The appeals were admissible.
2. It is established case law that, if the patent proprietor states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted and will not be submitting an amended text, the patent is to be revoked. This is supported by Article 113(2) EPC, which provides that a patent may be maintained only in a version approved by the patent proprietor. If there is no such version, one of the requirements for maintaining the patent is lacking (see the Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2).
3. With submission of 18 August 2023 the patent proprietor withdrew all pending requests in relation to the disputed patent. There is consequently no approved version upon which the patent could be maintained, Article 113(2) EPC.
4. Therefore, the Board has to order the revocation of the patent.

## **Order**

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

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated