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**Datasheet for the decision
of 7 December 2023**

Case Number: T 1978/20 - 3.3.09

Application Number: 11710243.4

Publication Number: 2544560

IPC: A24B15/24, B01D11/02, A23L27/10

Language of the proceedings: EN

Title of invention:
METHODS FOR EXTRACTING AND ISOLATING CONSTITUENTS OF
CELLULOSIC MATERIAL

Patent Proprietor:
British American Tobacco (Investments) Limited

Opponent:
Philip Morris Products S.A.

Headword:
Extracting and isolating constituents of cellulosic material/
BRITISH AMERICAN TOBACCO

Relevant legal provisions:
EPC Art. 113(2)
EPC R. 103(4) (a)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked
Reimbursement of appeal fee - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 1978/20 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 7 December 2023

Appellant: British American Tobacco (Investments) Limited
(Patent Proprietor) Globe House
1 Water Street
London WC2R 3LA (GB)

Representative: Russell, Tim
Venner Shipley LLP
200 Aldersgate
London EC1A 4HD (GB)

Appellant: Philip Morris Products S.A.
(Opponent) Quai Jeanrenaud 3
2000 Neuchâtel (CH)

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 September 2020 concerning maintenance of the
European Patent No. 2544560 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: M. Ansorge
A. Jimenez

Summary of Facts and Submissions

- I. This decision concerns the appeals filed by the proprietor and the opponent against the interlocutory decision of the opposition division that the European patent as amended met the requirements of the EPC.
- II. During the oral proceedings before the board, the proprietor declared that it withdrew all requests and no longer approved the text in which the patent was granted. In addition, the proprietor withdrew its appeal.
- III. The opponent requested that the decision under appeal be set aside and that the patent be revoked.

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. This principle, according to which the text of the patent is at the disposition of the proprietor, has to be strictly observed also in opposition and opposition appeal proceedings.
2. As the proprietor no longer approves the text of the patent as granted and does not pursue the patent according to any other request, there is no text of the patent on which the board can base its consideration of the opponent's appeal.
3. If the proprietor of a European patent states in opposition or appeal proceedings that it no longer

approves the text in which the patent was granted, and does not submit any amended text, the patent is to be revoked (Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, third paragraph and III.B.3.3, first paragraph). Therefore, the patent must be revoked, without any preceding substantive examination.

4. The proprietor withdrew its appeal after expiry of the period under Rule 103(3)(a) EPC but before the decision was announced at oral proceedings. Therefore, the appeal fee paid by the proprietor is to be reimbursed at 25% (Rule 103(4)(a) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The appeal fee paid by the proprietor is reimbursed at 25%.

The Registrar:

The Chairman:



H. Jenney

A. Haderlein

Decision electronically authenticated