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**Datasheet for the decision
of 19 September 2023**

Case Number: T 0928/21 - 3.3.06

Application Number: 12868656.5

Publication Number: 2815009

IPC: D02G3/00, B05D5/00, C08K5/00

Language of the proceedings: EN

Title of invention:
COMPOSITE POLYMER

Patent Proprietor:
International Paper Company

Opponents:
Aronova S.A.
Stora Enso Oyj

Headword:
COMPOSITE POLYMER / International Paper Company

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0928/21 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 19 September 2023

Appellant: Aronova S.A.
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4361 Esch-sur-Alzette (LU)

Representative: Gill Jennings & Every LLP
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Appellant: Stora Enso Oyj
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Representative: Walter, Kai U.
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Respondent: International Paper Company
(Patent Proprietor) 6400 Poplar Avenue
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Representative: Ricker, Mathias
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 6 May 2021
rejecting the opposition filed against European
patent No. 2815009 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: P. Ammendola
 C. Heath

Summary of Facts and Submissions

- I. Both opponents 1 and 2 (the appellants) lodged an appeal against the decision of the opposition division to reject the opposition filed against European patent no. 2 815 009.
- II. The Board issued a summons to oral proceedings and expressed its preliminary opinion in preparation for the hearing.
- III. The patent proprietor and respondent replied (letter dated 6 September 2023), stating that *"The patentee hereby withdraws their approval under Rule 71 EPC of the text in which the patent was granted. Pursuant to Article 113(2) EPC, we look forward to confirmation of cancellation of the scheduled oral proceedings and termination of the proceedings by a decision ordering the revocation of the patent based on the absence of an agreed text."*
- IV. The parties were then informed that the oral proceedings had been cancelled.

Reasons for the Decision

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

3. In the absence of any text of the patent on the basis of which the board can consider the appeal, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 10th edition, July 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:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated