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**Datasheet for the decision
of 22 February 2024**

Case Number: T 1627/21 - 3.3.02

Application Number: 14865506.1

Publication Number: 3073826

IPC: A01N47/14, A01N47/24,
A01N43/54, A01N43/653, A01P3/00

Language of the proceedings: EN

Title of invention:
A METHOD FOR CONTROLLING SOYBEAN RUST

Patent Proprietor:
UPL Limited

Opponent:
ADAMA Agricultural Solutions Ltd.

Headword:
Soybean rust/UPL

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84, T 0186/84, T 0646/08, T 2434/18

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1627/21 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 22 February 2024

Appellant: ADAMA Agricultural Solutions Ltd.
(Opponent) Golan Street
7019900 Airport City (IL)

Representative: Maiwald GmbH
Grünstraße 25
40212 Düsseldorf (DE)

Respondent: UPL Limited
(Patent Proprietor) Agrochemical Plant
Durgachak
Midnapore Dist.
Haldia, West Bengal 721 602 (IN)

Representative: J A Kemp LLP
80 Turnmill Street
London EC1M 5QU (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 9 September
2021 rejecting the opposition filed against
European patent No. 3073826 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chair M. O. Müller
Members: S. Bertrand
L. Bühler

Summary of Facts and Submissions

- I. The appeal lies from a decision of the opposition division rejecting the opposition filed against European patent No. 3 073 826.
- II. The board summoned the parties to oral proceedings as requested and informed them of its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- III. Oral proceedings before the board took place on 22 February 2024.
- IV. During the oral proceedings, the patent proprietor stated that they no longer approved of the text of the patent as granted (claims and description) as well as of the claims of all auxiliary requests on file and that they expected the patent to be revoked.

Reasons for the Decision

1. According to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine and decide on the European patent only in the text submitted to it or agreed upon by the proprietor of the patent.
2. In view of the patent proprietor's statement during the oral proceedings (point IV. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged

impediments to patentability (T 186/84, OJ 1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons)

3. According to the case law of the boards of appeal, in these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC without assessing issues relating to patentability since the patent proprietor no longer challenges the request for revocation of the opposed patent, and the patent cannot be maintained against the proprietor's will (see decision T 73/84, OJ EPO 1985, 241, and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, III.B.3.3).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



M. Schalow

M. O. Müller

Decision electronically authenticated