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**Datasheet for the decision  
of 21 October 2024**

**Case Number:** T 0499/22 - 3.3.06

**Application Number:** 12767019.8

**Publication Number:** 2764057

**IPC:** C09C1/02, C01F11/18, D21H19/38,  
D21H21/52, C09D7/61, C09D7/62,  
C09D5/02, D21H17/67, C09D7/42,  
B82Y30/00

**Language of the proceedings:** EN

**Title of invention:**  
USE OF PRECIPITATED CALCIUM CARBONATE PARTICLES

**Patent Proprietor:**  
IMERTECH SAS

**Opponent:**  
Schaefer Kalk GmbH & Co. KG

**Headword:**  
Calcium Carbonate/Imertech

**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Basis of decision - text or agreement to text withdrawn by  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**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0499/22 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 21 October 2024**

**Appellant:** IMERTECH SAS  
(Patent Proprietor) 43, quai de Grenelle  
75015 Paris (FR)

**Representative:** Haseltine Lake Kempner LLP  
One Portwall Square  
Portwall Lane  
Bristol BS1 6BH (GB)

**Appellant:** Schaefer Kalk GmbH & Co. KG  
(Opponent) Louise-Seher-Strasse 6  
65582 Diez (DE)

**Representative:** Mai Besier  
European Trademark Attorneys  
Patentanwälte  
Kreuzberger Ring 18a  
65205 Wiesbaden (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
13 December 2021 concerning maintenance of the  
European Patent No. 2764057 in amended form.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** R. Elsässer  
O. Loizou

## **Summary of Facts and Submissions**

- I. The appeals of both the patent proprietor and the opponent lie from the decision of the opposition division to maintain the patent in amended form.
- II. With its grounds of appeal, the opponent requested the revocation of the patent.
- III. With its grounds of appeal, the proprietor filed seven sets of claims of auxiliary requests.
- IV. In response to the board's preliminary opinion, the proprietor announced with letter dated 14 October 2024 that it no longer approved the text in which the patent was granted, would not be filing any further requests, expected the patent to be revoked and that oral proceedings should be cancelled.

## **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC, the EPO shall examine and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. In the present case, the proprietor expressly stated in writing that it no longer approved the text of the granted patent, would not be filing any further requests and expected revocation of the patent.
3. Under these circumstances, 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).

4. In view of the fact that revocation of the patent is also the main request of the opponent, the decision can be issued without holding oral proceedings.

## 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