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**Datasheet for the decision  
of 15 January 2026**

**Case Number:** T 0742/24 - 3.3.02

**Application Number:** 18189515.2

**Publication Number:** 3427584

**IPC:** A01N37/44, A01N37/34, A01P3/00,  
A01N43/653, A01N43/54

**Language of the proceedings:** EN

**Title of invention:**  
A METHOD FOR CONTROLLING RUST

**Patent Proprietor:**  
UPL Ltd

**Opponent:**  
Syngenta Crop Protection AG

**Relevant legal provisions:**  
EPC Art. 113(2), 112(1)(a)  
EPC R. 71(3), 71(5)

**Keyword:**  
Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked  
Referral to the Enlarged Board of Appeal - (no)

**Decisions cited:**

G 0007/93, G 0003/98, T 0073/84

**Catchword:**

Under Article 113(2) EPC, the EPO cannot decide upon a text withdrawn, or no longer agreed to, by the patent proprietor (T 73/84 confirmed; see reasons for the decision, 2.2.6)



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0

Case Number: T 0742/24 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 15 January 2026**

**Appellant:** Syngenta Crop Protection AG  
(Opponent) Rosentalstrasse 67  
4058 Basel (CH)

**Representative:** Michalski Hüttermann & Partner  
Patentanwälte mbB  
Kaistraße 16A  
40221 Düsseldorf (DE)

**Respondent:** UPL Ltd  
(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 19 March 2024  
rejecting the opposition filed against European  
patent No. 3427584 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** M. Kollmannsberger  
**Members:** P. O'Sullivan  
R. Romandini

## Summary of Facts and Submissions

- I. The appeal of the opponent (hereinafter appellant) lies from the decision of the opposition division to reject the opposition against European patent 3 427 584.
- II. With the reply to the statement of grounds of appeal, the patent proprietor (respondent) *inter alia* requested that the appeal be dismissed, implying maintenance of the patent as granted, or alternatively, remittal of the case to the opposition division for consideration of auxiliary requests 1 to 7 submitted therewith.
- III. In a first communication pursuant to Article 15(1) RPBA, the board provided the preliminary view that none of the respondent's claim requests were allowable, and that the patent was to be revoked.
- IV. With letter dated 3 December 2025, the appellant requested, in the event that the respondent should withdraw its consent to the text of the patent, that
- the board nevertheless issue a fully reasoned decision,
  - as an auxiliary measure, the board dismiss the request (i.e. the withdrawal of approval of the text) as inadmissible due to an abuse of proceedings,
  - or as a further auxiliary measure that the board refer questions in this regard to the Enlarged Board of Appeal.

Suggestions for questions which could be posed to the Enlarged Board in a referral were proposed.

V. With letter dated 12 December 2025, the respondent stated the following:

*"We hereby withdraw the proprietor's approval of the text of European Patent No. 3427584 (18189515.2)"*

and further stated that it would not attend oral proceedings before the board scheduled for 15 January 2026.

VI. In a second communication pursuant to Article 15(1) RPBA, the board requested that the respondent clarify its requests, in particular whether the withdrawal of the approval of the text of the patent extended to auxiliary requests 1 to 7 submitted with its reply to the statement of grounds of appeal. The board also provided the preliminary view that there was no legal basis in the EPC to grant the appellant's requests set out in the letter dated 3 December 2025.

VII. With letter dated 17 December 2025, the appellant maintained its requests set out with letter dated 3 December 2025 and submitted further arguments. The request for oral proceedings was also maintained.

VIII. With letter dated 30 December 2025, the respondent confirmed that the withdrawal of approval of the text of the patent also extended to all auxiliary requests, i.e. auxiliary requests 1 to 7.

IX. With letter dated 8 January 2026, the appellant submitted further arguments.

X. Oral proceedings by videoconference took place as scheduled on 15 January 2026 in the presence of the appellant and in the absence of the respondent, as

announced with letter dated 12 December 2025. During oral proceedings, the appellant withdrew the request submitted with letter dated 3 December 2025 that the board dismiss the respondent's withdrawal of the approval of the text of the patent as inadmissible due to an abuse of proceedings.

XI. Requests relevant to the present decision

The appellant requested that the contested decision be set aside and that the patent be revoked in its entirety.

It also requested

(a) that the board nevertheless issue a fully reasoned decision; and

(b) as an auxiliary measure, that the board refer certain questions to the Enlarged Board of Appeal.

XII. For the relevant party submissions, reference is made to the reasons for the decision set out below.

**Reasons for the Decision**

1. Introduction

1.1 The present appeal concerns the procedural consequences of the fact that the patent proprietor (respondent) withdrew its approval of the text of the patent as granted (main request) and of all auxiliary requests 1 to 7.

1.2 The relevant legal provision for this issue is Article 113(2) EPC, which reads as follows:

*"The European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent."*

1.3 As acknowledged by the appellant, the long-established practice of the Boards of Appeal in such a situation has been to revoke the patent on the basis of the lack of an agreed text pursuant to Article 113(2) EPC, because, in the absence of any text agreed to by the proprietor, substantive examination of patentability is no longer possible.

1.4 As further acknowledged by the appellant, this practice was first introduced in decision T 73/84 and has since been consistently applied in several hundred decisions of the Boards of Appeal up to the date of oral proceedings in the present case (see T 73/84, OJ EPO 1985, page 241 and selected decisions cited in the Case Law of the Boards of Appeal, 11th Edition 2025, III.B. 3.3 and IV.D.2).

1.5 Against this background, three requests of the appellant are to be discussed in this decision, together with the related arguments:

- first, the request to issue a fully reasoned decision (see point 2 below);
- second, the request to include comments on patentability as obiter dicta (see point 3 below); and
- third, the request to refer questions to the Enlarged Board (see point 4 below).

A further argument raised by the appellant concerned the alleged unfair tactical use of multiple divisional filings. This argument was tied to its request to dismiss the withdrawal of the approval of the text as an abuse of proceedings. Since that request was withdrawn (see above, point X), this part of the appellant's analysis need not be addressed.

2. The appellant's request that the board issue a fully reasoned decision
  - 2.1 Appellant's arguments
    - 2.1.1 During oral proceedings before the board, the appellant clarified that its request was to be understood as a request for a fully reasoned decision, at least on the substance of the respondent's main request (patent as granted). Specifically, it was requested that the board decide upon the main request based on the appellant's grounds for opposition, notwithstanding the withdrawal of agreement to the text of that request as set out above. In the following, such a decision is referred to as a decision in substance.
    - 2.1.2 The appellant submitted that decision T 73/84 and subsequent decisions applying the same principles (hereinafter referred to collectively as "decisions taken in the absence of an agreed text") were not fully or not adequately reasoned. Indeed, according to the appellant, none of these decisions had explained why a decision in substance was not needed or not possible.
    - 2.1.3 The appellant further argued that the reasoning underlying T 73/84 was developed by the deciding board in that case merely to fill an apparent "lacuna" in the

EPC, which lacked and to this day still lacks (see Article 105a(2) EPC) an explicit provision allowing a patent proprietor to surrender or request revocation of the patent. The reasoning applied in decisions taken in the absence of an agreed text was developed to overcome this lacuna.

2.1.4 Finally, the appellant submitted that in the decisions taken in the absence of an agreed text, the correct interpretation of this provision had neither been examined nor correctly applied. Article 113(2) EPC was to be construed as an "or" provision, not as an "and" provision. It provided that 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". On this basis, a text could serve as a basis for a decision either because it had been "submitted to the EPO" **or** because it had been "agreed" by the proprietor.

2.1.5 Consequently, according to the appellant, a text "submitted" at an earlier stage of proceedings could still be decided upon in accordance with Article 113(2) EPC, even after the patent proprietor had withdrawn its approval of that text.

2.1.6 In support of this interpretation of Article 113(2) EPC, the appellant cited the following passage from Enlarged Board of Appeal decision G 7/93 (point 2 of the reasons):

*"The referring Board of Appeal has indicated its view that Article 113(2) EPC is based on the fundamental right of parties to civil law proceedings to decide the scope of their case. In the Enlarged Board's view, this provision of the EPC does not give any right to an*

*applicant in the sense that the EPO is in any way bound to consider a request for amendment put forward by the applicant. **The effect of this provision is merely to forbid the EPO from considering and deciding upon any text of an application other than that "submitted to it, or agreed, by the applicant or proprietor ..."*** (emphasis added by the appellant).

2.1.7 In view of this passage, the appellant argued, the correct interpretation of Article 113(2) EPC was that it merely prevented the EPO on its own motion from altering the text of the application without the consent of the applicant, i.e. implying that it did not prevent the EPO from deciding upon a text submitted to it, but no longer agreed.

2.2 Board's assessment

2.2.1 The board does not agree that the decisions establishing the principle that a withdrawal of approval of the text leads to the revocation of the patent did not include proper reasoning. In particular, in the case underlying T 73/84, the deciding board explained that, since under Article 113(2) EPC the EPO must consider the European patent only in the text submitted to it, or agreed by, the proprietor of the patent, the withdrawal of approval left no text on which the appeal could be considered, the only remaining possibility being revocation of the patent (points 3 and 5 of the reasons). Subsequent decisions have followed the same line of reasoning. However, what is decisive in the present proceedings is how, in the board's view, Article 113(2) EPC should be interpreted and whether the board has reasons to believe that the interpretation followed so far is incorrect.

- 2.2.2 The appellant's main argument to this effect, as understood by the present board, is that Article 113(2) EPC sets out two alternative bases on which the EPO may decide upon a patent, namely a text that has been "submitted" to it, or a text that has been "agreed" by the proprietor. By virtue of the word "or", these two alternatives are independent of each other. As a consequence, a text once submitted by the proprietor remains available as a basis for a decision even after the proprietor has stated that it no longer agrees to it.
- 2.2.3 The wording of the provision is *prima facie* consistent with this view. The board considers correct, however, solely the interpretation under which "submitted" and "agreed" are two procedural pathways for expressing the same underlying legal state, namely that the proprietor agrees to the text at the moment the decision is taken, a view that underlies the case law of the Boards of Appeal. Two considerations favour this latter interpretation.
- 2.2.4 First, Article 113(2) EPC is addressed to the EPO and governs how it shall act when it examines and decides. It is a rule of conduct directed at the act of deciding. A provision of this form necessarily refers to the state of affairs at the moment the decision must be taken, and not to a previous stage of the proceedings.
- 2.2.5 Second, in the board's view, the purpose of Article 113(2) EPC is to ensure that the applicant or proprietor retains control over the text decided upon. On that premise, that purpose only has practical effect if the proprietor's agreement to the text is operative at the moment the decision is taken. Deciding upon a

text which the proprietor has stated it no longer agrees to provides no such control. The appellant's construction would deprive the provision of the function suggested above: if any historically filed text remained permanently available as a decision basis, a statement by the proprietor that it no longer agrees to that text would have no legal consequence whatsoever. The EPO could thereby decide in substance upon a text against the proprietor's will. In the board's view, this is the very result that Article 113(2) EPC is designed to prevent. The text upon which the decision is taken must be decided by the proprietor or applicant, and not by the European Patent Office.

- 2.2.6 It follows that "submitted" in Article 113(2) EPC does not refer merely to a historical act of filing, but to a continuing expression of agreement. A text is "submitted to" the EPO within the meaning of that provision only as long as the proprietor maintains agreement to it. Under Article 113(2) EPC, the EPO cannot decide upon a text withdrawn, or no longer agreed to, by the patent proprietor, irrespective of whether the text remains on file. Once the proprietor has stated that it no longer agrees to the text, that text no longer satisfies the condition set by Article 113(2) EPC.
- 2.2.7 This conclusion is not contradicted by the passage in G 7/93 cited by the appellant in support of its reading of Article 113(2) EPC. That passage merely quotes the "or" construction as it appears in Article 113(2) EPC; it does not provide any interpretation going beyond the wording of the provision itself. It is however indicated elsewhere in G 7/93 that the appellant's interpretation is not correct. In particular, the

Enlarged Board stated (point 2.2 of the reasons) that the underlying object of the procedure under Rule 51(6) EPC is to conclude the granting procedure on the basis of the previously notified and approved text. The former Rules 51(4) to (6) EPC correspond in substance to present Rules 71(3) and 71(5) EPC, which provide that the decision to grant is based only on the text so notified and approved, or deemed approved, by the applicant. This shows that the "or agreed"-limb of Article 113(2) EPC is designed precisely for situations where the EPO itself has proposed an amended text. In that case, a decision may only be taken once the applicant has expressed agreement through a specific procedural act. It would be incoherent to read the "submitted"-limb as requiring anything less.

- 2.2.8 The board therefore concludes that both limbs of Article 113(2) EPC are directed at the same underlying legal condition: the existence, at the time of the decision, of a text to which the proprietor currently agrees. Where the proprietor withdraws its consent, there is no text on which the board can base a decision.
- 2.2.9 The established practice of the Boards of Appeal rests therefore on an interpretation and understanding of the EPC which the present board does not consider incorrect. There is consequently no reason to depart from it in the present proceedings.
- 3. The possibility of including an "*obiter dictum*"
  - 3.1.1 The appellant argued that, even if the board by virtue of Article 113(2) EPC were prevented from taking a reasoned decision on a text the approval of which had been withdrawn, this would not prevent it from

including substantive reasons in relation to that text, for example in the form of an *obiter dictum*. The board understands this as a subordinate request.

- 3.1.2 The board cannot accept the argument underlying this request. First, an *obiter dictum*, by definition, falls outside the legally operative act of the board examining and deciding upon a text within the meaning of Article 113(2) EPC, as it does not form part of the ratio decidendi of a decision.
- 3.1.3 Second, the inclusion of *obiter dicta* lies entirely within the discretion of the board. They are by nature exceptional. *Obiter dicta* are used, for example, to comment on issues of general legal interest or on points which may arise in future cases, or to address questions which are related to the case but not necessary for the decision. They are not intended to provide a substitute for a substantive decision where the procedural conditions for such a decision are not fulfilled.
- 3.1.4 In any event, in the present case, the board sees no reason to include substantive remarks on the allowability of claim requests the agreement to which has been withdrawn. The appellant originally relied on the pendency of other divisional applications before the EPO. It also referred to parallel proceedings in other jurisdictions (Brazil and the US). However, as later acknowledged by the appellant, no further proceedings concerning applications or patents of the same family are pending before the EPO. The reference to applications filed or patents granted outside the EPC system is irrelevant, since these are not subject to the substantive provisions of the EPC.

4. The appellant's request for referral under Article 112(1)(a) EPC

4.1 By letter dated 3 December 2025, the appellant proposed that the following questions, concerning whether a decision in substance should be issued, be referred to the Enlarged Board of Appeal:

*"1. If in an opposition procedure the patentee withdraws its consent with the text of the patent as granted (claims and description) as well as with all auxiliary requests, is the Office then prevented from issuing a full reasoned decision, making statements about all grounds of opposition raised?"*

*2. If the answer to 1. is answered to the negative then under what circumstances shall a full reasoned decision be issued? Amongst these circumstances does it play a role that there are divisional patents or applications that are still pending?"*

4.2 According to the wording of Article 112(1)(a) EPC, a referral may be made only if a decision of the Enlarged Board is "required" for the purpose of either ensuring uniform application of the law or because a point of law of fundamental importance arises. The case law interprets this requirement as providing that the question referred must be decisive for the outcome of the proceedings. The Enlarged Board has consistently held that this requirement excludes referrals concerning questions of a merely theoretical or academic nature (G 3/98, point 1.2.3 of the reasons). The latter would be the case if the referring board were to reach the same decision regardless of the answer to the referred question (*ibidem*).

- 4.3 In the board's understanding, the relevant consideration when assessing the above requirement is whether the answer could affect the result to be set out in the Order of the decision. If the referring board were to reach the same result in its Order irrespective of the answer to the referred question, a decision of the Enlarged Board would not be "required" within the meaning of Article 112(1)(a) EPC, even if the reasoning might differ.
- 4.4 In the present case, the appellant did not dispute at the oral proceedings that, irrespective of how the proposed questions were answered, the appeal would result in the revocation of the patent. The referral would only concern whether the board may (not must) address, in the reasoning, substantive issues relating to a text originally submitted or agreed to by the patent proprietor. In these circumstances, a decision of the Enlarged Board is not required for the board to decide the appeal within the meaning of Article 112(1)(a) EPC as interpreted above. The request for referral is consequently rejected.
5. Conclusions
- 5.1 The appellant's request that the contested decision be set aside and that the patent be revoked in its entirety is granted.
- 5.2 As a consequence of the analysis set out above, the principle established in T 73/84 and subsequent decisions under Article 113(2) EPC applies to the present case: the absence of an agreed text for the patent precludes any substantive examination of the alleged impediments to patentability. The proceedings are therefore to be terminated by a decision ordering

revocation of the patent, without assessing the issues raised on the merits.

5.3 The board also sees no reason - in the present proceedings - to address those issues in the form of *obiter dicta*.

5.4 Finally, a referral to the Enlarged Board of Appeal is not required to decide the present case.

## Order

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

1. The request for referral of questions to the Enlarged Board of Appeal is rejected.
2. The decision under appeal is set aside.
3. The patent is revoked.

The Registrar:

The Chairman:



U. Bultmann

M. Kollmannsberger

Decision electronically authenticated