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

Case Number: T 0860/24 - 3.3.02

Application Number: 20174384.6

Publication Number: 3733798

IPC: C09D151/08, B65B17/00,
B65D25/14, C08F265/06,
C08F283/02

Language of the proceedings: EN

Title of invention:

COATING COMPOSITIONS FOR CANS AND METHODS OF COATING

Patent Proprietor:

SWIMC LLC

Opponent:

PPG Industries, Inc.

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

No text of the patent approved by the patent proprietor

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0860/24 - 3.3.02

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

Appellant I: SWIMC LLC
(Patent Proprietor) 101 W. Prospect Avenue
Cleveland, OH 44115 (US)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstraße 3
81675 München (DE)

Appellant II: PPG Industries, Inc.
(Opponent) One PPG Place
Pittsburgh, PA 15272 (US)

Representative: f & e patent
Braunsberger Feld 29
51429 Bergisch Gladbach (DE)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted/
electronically transmitted on 26 April 2024
concerning maintenance of the European Patent
No. 3733798 in amended form.

Composition of the Board:

Chairman M. Kollmannsberger
Members: M. Maremonti
M. Blasi

Summary of Facts and Submissions

- I. The appeals by the patent proprietor and the opponent were against the opposition division's interlocutory decision, according to which European patent No. 3 733 798 ("the patent") as amended in the form of auxiliary request 1, the claims of which were filed by letter dated on 20 March 2023, and the invention to which it relates, meets the requirements of the EPC.
- II. In its statement of grounds of appeal and its reply to the opponent's appeal, the patent proprietor (appellant I) submitted that a substantial procedural violation had occurred in the proceedings before the opposition division justifying the immediate remittal of the case to the opposition division. It further rebutted the opponent's arguments as regards added subject-matter, sufficiency of disclosure, novelty and inventive step.

The patent proprietor requested that the appealed decision be set aside, that the case be remitted to the opposition division for further prosecution and that the appeal fee be reimbursed in full. Alternatively, the patent proprietor requested that

- the patent be maintained as granted, meaning that the opposition be rejected or
- the patent be maintained as amended in the form of auxiliary request 1 found allowable by the opposition division, meaning that the opponent's appeal be dismissed, or
- the case be remitted to the opposition division for further prosecution in case any one of auxiliary requests 2 to 97 had to be discussed in substance or

- the patent be maintained in amended form on the basis of the claims of one of auxiliary requests 2 to 97.

III. In its statement of grounds of appeal and reply to the patent proprietor's appeal, the opponent (appellant II) submitted, *inter alia*, that the claimed subject-matter extended beyond the content of the earliest application as filed, was insufficiently disclosed, lacked novelty and inventive step. The opponent requested, *inter alia*, that the appealed decision be set aside and that the patent be revoked in its entirety.

IV. The board summoned the parties to oral proceedings to be held on 19 May 2026.

V. By the communication under Rules 84(1) and 100(1) EPC dated 19 December 2025, the board informed the parties that the patent had lapsed in all the designated Contracting States and invited the parties to state whether a continuation of the proceedings was requested.

VI. On 12 January 2026, the board issued a communication under Article 15(1) RPBA in preparation for the oral proceedings.

VII. By letter dated 14 January 2026, the patent proprietor withdrew its appeal.

VIII. By letter dated 18 February 2026, the opponent requested that the appeal proceedings be continued and provided reasons in support of a continuation.

IX. By a further communication dated 13 March 2026, the board stated that it understood the appeal's withdrawal by the patent proprietor as meaning that that the patent proprietor

- did not request continuation of the appeal proceedings and that,

- due to the withdrawal of its appeal, the patent proprietor no longer pursued the patent as granted as the main request and also no longer pursued its request for reimbursement of 100% of the appeal fee for reason of a substantial procedural violation having occurred.

The board further informed the parties that, in view of the opponent's letter dated 18 February 2026 the appeal proceedings were to be continued. It also invited the patent proprietor to consider its procedural and substantive requests in view of the board's communication under Article 15(1) RPBA and inform the board accordingly.

- X. By letter dated 27 March 2026, the patent proprietor withdrew all auxiliary requests and its approval of the text of the patent as granted.
- XI. By communication dated 2 April 2026, the board cancelled the oral proceedings.

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 of the patent.
2. Since the patent proprietor withdrew its approval of the text of the patent as granted and also withdrew all claim requests on file, there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the Boards of Appeal (see e.g. T 73/84, OJ EPO 1985, page 241 and the decisions

cited in the Case Law of the Boards of Appeal, 11th Edition 2025, III.B.3.3 and IV.D.2) that under these circumstances the patent is to be revoked without further substantive examination. There are also no ancillary issues that would have to be dealt with by the board in the present case.

4. Since the revocation of the patent, i.e. with effect *ex tunc*, is in accordance with the opponent's request, this decision can be issued without 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:



U. Bultmann

M. Kollmannsberger

Decision electronically authenticated