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Aktenzeichen / Case Number / N° du recours : T 181/86

Anmeldenummer / Filing No / N° de la demande : 79 900 832.1

Veröffentlichungs-Nr. / Publication No / N° de la publication : 00 161 24

Bezeichnung der Erfindung: plasticized, impact modified polycarbonates

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : C 08 L 69/00

ENTSCHEIDUNG / DECISION

vom / of / du 12 June 1987

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

General Electric (respondent)

Einsprechender / Opponent / Opposant : BAYER (appellant)

Stichwort / Headword / Référence :

EPÜ/EPC/CBE Article 102(3)(a), 113(2)

Kennwort / Keyword / Mot clé :

"Revocation of the European Patent"
"Formal request by the proprietor of the
patent"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

Case Number : T 181 /86

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 12 June 1987

Appellant :
(Opponent)

BAYER AG, Leverkusen
Bayerwerk
D-5090 Leverkusen

Representative :

Respondent :
(Proprietor of the patent)

General Electric Company
1 River Road
Schenectady
NY 12305
USA

Representative :

Schüler, Horst. Dr.
Kaiserstrasse 41
D-6000 Frankfurt/Main 1

Decision under appeal :

Interlocutory Decision of Opposition
Division of the European Patent Office
dated 13 May 1986 concerning maintenance
of European patent No. 16 124 pursuant
in amended form.

Composition of the Board :

Chairman : P. Lançon

Member : G.D. Paterson

Member : S. Schödel

Summary of Facts and Submissions

- I. European patent No. 16 124 was granted on 31 March 1983 on European patent application No. 79 900 832.1 filed on 2 July 1979.
- II. The Appellant filed an opposition against the European patent on 10 January 1984 requesting that it be revoked.
- III. In its Interlocutory Decision within the meaning of Article 106(3) EPC, dated 13 May 1986, the Opposition Division maintained the patent as amended on the basis of the documents specified in the communication pursuant to Rule 58(4) EPC, dated 22 January 1986.
- IV. The Appellant appealed against the decision on 6 June 1986 and paid the fee on the same date. The Statement of Grounds was filed on 4 September 1986, in which the Appellant requested that the European patent be revoked. In reply, in letter dated 30 January 1987 and received on 2 February 1987, the Appellant stated that he is no longer interested in the patent, and he also requested that the patent be revoked.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. The consequence of a patent proprietor requesting revocation of his patent during the appeal stage of opposition proceedings was considered in Decision T 186/84 "Request from patent proprietor for revocation/BASF" (OJ EPO 3/1876, page 79). The course taken in that Decision (and followed subsequently in other decisions) was to consider the proprietor's request as equivalent to

the withdrawal of his agreement to the text of the patent as granted; and on that basis to revoke the patent, following the reasoning in Legal Advice No. 11/82 (OJ EPO 2/1982, page 51) and Decision T 73/84 "Revocation at the instigation of the patent proprietor/SMS", (OJ 8/1985, page 241).

3. In the present case (as in Decision T 186/84) the patent proprietor has requested that his patent be revoked. That request is directed to the Board of Appeal which has seisin of the appeal, and which has the duty to examine and decide the appeal in accordance with Articles 110 and 111 EPC (See Decision T 237/86, dated 11 June 1987). In such circumstances, i.e. when it is clear that all parties to the appeal are agreed that the patent should be revoked, this Board sees no difficulty in taking an alternative course to that followed in Decision T 186/84: namely, to order that the patent be revoked, in the exercise of its powers under Article 111(1) EPC.
4. Accordingly, having regard to the Respondent's letter dated 30 January 1987 in the exercise of its powers under Article 111(1) EPC the Board has decided to revoke the European patent.

Order

For these reasons, it is decided that:

1. The contested decision is set aside.
2. European patent No. 16 124 is revoked.

The Registrar:

The Chairman:

F. Klein

P. Lançon