Datasheet for the decision of 25 February 2013

Case Number: T 0431/11 - 3.3.09
Application Number: 97936379.3
Publication Number: 915752
IPC: B32B 7/10
Language of the proceedings: EN
Title of invention:
Coextruded laminate
Patent Proprietor:
E.I. du Pont de Nemours and Company
Opponent:
Evonik Degussa GmbH
Headword:
-
Relevant legal provisions:
EPC Art. 113(2)
Keyword:
"No text agreed by the patentee - revocation of the patent"
Decisions cited:
T 0601/98
Catchword:
-
Case Number: T 0431/11 - 3.3.09

DECISION
of the Technical Board of Appeal 3.3.09
of 25 February 2013

Appellant: Evonik Degussa GmbH
(Opponent)
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D-45764 Marl   (DE)

Representative: Polypatent
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Respondent: E.I. du Pont de Nemours and Company
(Patent Proprietor)
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Representative: Matthews, Derek Peter
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Composition of the Board:
Chairman: W. Sieber
Members: J. Jardón Álvarez
K. Garnett
Summary of Facts and Submissions

I. In its interlocutory decision posted on 5 January 2011, the opposition division decided that the European patent No. 0 915 752 could be maintained in amended form according to Article 101(3) EPC.

II. The opponent, Evonik Degussa GmbH, lodged an appeal against this decision on 19 February 2011 and paid the appeal fee on the same day. The statement of grounds of appeal was filed on 5 May 2011.

III. In a letter dated 15 February 2013 the patent proprietor, E.I. du Pont de Nemours and Company, informed the board that it will not be represented at the oral proceedings scheduled to take place on 19 April 2013 and stated:
"I hereby withdraw all currently pending requests of the Patentee. The Patentee no longer approves of the text in which the Patent was granted and wishes for it to be revoked."

Reasons for the Decision

1. The appeal is admissible.

2. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent. Agreement cannot be held to be given if the proprietor, without submitting an amended text, expressly states that he no longer approves the text of the patent as granted or previously amended. In such a situation a
substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see, for instance T 601/98).

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

M. Cañueto Carbajo

W. Sieber