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Datasheet for the decision
of 23 March 2017

Case Number: T 1357/14 - 3.3.03
Application Number: 04740639.2
Publication Number: 1641862
IPC: C08G77/04, C09D5/16, C09D143/04
Language of the proceedings: EN

Title of invention: SILYL ESTER COPOLYMER COMPOSITIONS

Patent Proprietor:
Akzo Nobel Coatings International B.V.

Opponents:
Jotun A/S
PPG Europe B.V.

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

Decisions cited:
T 0073/84
Case Number: T 1357/14 - 3.3.03

DECISION of Technical Board of Appeal 3.3.03 of 23 March 2017

Appellant: Akzo Nobel Coatings International B.V.
(Patent Proprietor)
Velperweg 76
6824 BM Arnhem (NL)

Representative: Akzo Nobel IP Department
Velperweg 76
6824 BM Arnhem (NL)

Appellant: Jotun A/S
(Opponent 1)
P.O. Box 2021
3248 Sandefjord (NO)

Representative: Campbell, Neil Boyd
Dehns
St Bride's House
10 Salisbury Square
London
EC4Y 8JD (GB)

Appellant: PFG Europe B.V.
(Opponent 2)
Amsterdamseweg 14
1422 AD Uithoorn (NL)

Representative: Appleyard Lees IP LLP
15 Clare Road
Halifax HX1 2HY (GB)

Decision under appeal: Interlocutory decision of the Opposition
Composition of the Board:

Chairman  D. Semino
Members:     O. Dury
            C. Brandt
Summary of Facts and Submissions

I. The appeals by the patent proprietor (appellant 1) and each of opponents 1 and 2 (appellants 2 and 3) lie from the opposition division’s interlocutory decision maintaining patent No. EP 1 641 862 in amended form.

II. With letter of 20 March 2017, which was sent in reply to the Board's communication in which issues to be discussed at the oral proceedings were identified, appellant 1 filed the following declaration:

"Please be informed that Proprietor no longer approves the text in which the above-mentioned patent was granted. Proprietor also no longer approves any amendments filed in the opposition and appeal procedure."

III. The oral proceedings which had been arranged for 7 June 2017 were thereafter cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC the European Patent Office must consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle is part of the common provisions governing procedure and is therefore to be strictly observed also in opposition and opposition appeal proceedings.

2. In the present case appellant 1 (the patent proprietor) withdrew during the appeal proceedings their approval
of the text of the patent as granted and as upheld by
the opposition division, including all the requests
submitted either during the opposition or appeal
proceedings, with the consequence that there is no text
of the patent on the basis of which the Board can
consider the case.

3. While the procedure for revocation pursuant to
Articles 105a to 105c EPC is not available during
opposition and opposition appeal proceedings, it is the
consistent approach of the case law that, if the patent
proprietor states that he no longer approves the text
in which the patent was granted and does not submit or
withdraws any amended text, the patent as a consequence
of Article 113(2) EPC is to be revoked without
substantive examination as to patentability, which
becomes impossible in the absence of a valid text (see
Case Law of the Boards of Appeal of the EPO,
8th Edition 2016, IV.C.5.2, in particular T 73/84,
OJ EPO 1985, 241 and the numerous decisions following
the same approach).

4. The Board has no reason in the present case to deviate
from the consistent approach of the case law, with the
consequence that the patent has to be revoked.
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:

P. Martorana  

D. Semino

Decision electronically authenticated