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**Datasheet for the decision  
of 6 November 2024**

**Case Number:** T 2102/22 - 3.3.03

**Application Number:** 15706014.6

**Publication Number:** 3114160

**IPC:** C08K5/00, C08K5/18, C09K15/18

**Language of the proceedings:** EN

**Title of invention:**  
ANTIOXIDANT COMPOSITIONS

**Opponent:**  
BASF SE

**Relevant legal provisions:**  
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by the  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

**Decisions cited:**  
T 0073/84, T 0186/84, T 0646/08, T 2434/18



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 2102/22 - 3.3.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 6 November 2024**

**Appellant:** BASF SE  
(Opponent) 67056 Ludwigshafen (DE)

**Representative:** Meissner Bolte Partnerschaft mbB  
Patentanwälte Rechtsanwälte  
Postfach 86 06 24  
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**Respondent:** SI Group-Switzerland GmbH  
(Patent Proprietor) Kästeliweg 7  
4133 Pratteln (CH)

**Representative:** Gordon, Kirsteen Helen  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
1 July 2022 concerning maintenance of the  
European Patent No. 3114160 in amended form.**

**Composition of the Board:**

**Chairman** D. Semino  
**Members:** F. Rousseau  
M. Millet

## **Summary of Facts and Submissions**

- I. The appeal lodged by the opponent (appellant) lies from the interlocutory decision of the opposition division according to which European patent No. 3 114 160 as amended on the basis of the claims of the main request filed with letter of 10 June 2021 and an adapted description met the requirements of the EPC.
- II. The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- III. The patent proprietor (respondent) initially requested that the appeal be dismissed, or alternatively that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 17 filed with the reply to the statement of grounds of appeal.
- IV. In preparation of oral proceedings the Board issued a communication pursuant to Article 15(1) RPBA in which a preliminary opinion was given in respect of all claim requests.
- V. Oral proceedings, originally scheduled to take place on 6 November 2024, were cancelled after the respondent had indicated with letter of 31 October 2024 that they would not attend the oral proceedings and they withdrew their request for oral proceedings.
- VI. With letter of 4 November 2024 the respondent withdrew all claim requests, including the main request and all auxiliary requests and also disapproved the granted text.

## **Reasons for the Decision**

1. Article 113(2) EPC stipulates that the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent.
2. Since the text of a patent is at the disposition of the patent proprietor, their patent cannot be maintained against their will. In the case at hand the patent proprietor withdrew their approval of the text of the patent in any form (see point VI. above). They thus unequivocally withdrew their approval of the text of the patent as granted and as amended by the main request and the auxiliary requests. Consequently, there is no longer any text of the patent in the proceedings which the Board can consider for compliance with the requirements of the EPC, so that it is not possible to take a decision on the merits (see e.g. decisions T 186/84, OJ 1986, 79, Reasons 5; T 646/08, Reasons 4 and T 2434/18, Reasons 4).
3. It is established case law of the Boards of Appeal that, in the present circumstances, the decision under appeal must be set aside and the patent be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, sections III.B.3.3 and IV.D.2). The Board has no reason to deviate from this established jurisprudence of the Boards of Appeal, with the consequence that the patent is 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:



D. Hampe

D. Semino

Decision electronically authenticated