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**Datasheet for the decision
of 12 December 2024**

Case Number: T 2200/22 - 3.3.03

Application Number: 12755843.5

Publication Number: 2817374

IPC: C08L79/02

Language of the proceedings: EN

Title of invention:

CARBOHYDRATE BASED BINDER SYSTEM AND METHOD OF ITS PRODUCTION

Patent Proprietor:

Knauf Insulation

Opponents:

Johns Manville
Saint-Gobain Isover
ROCKWOOL INTERNATIONAL A/S

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Basis of decision - text or agreement to text withdrawn by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, T 0186/84



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Boards of Appeal
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Case Number: T 2200/22 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 12 December 2024

Appellant 1: Johns Manville
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Denver CO 80202 (US)

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Appellant 2: Saint-Gobain Isover
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Respondent: Knauf Insulation
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Representative: ARC-IP
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Party as of right: ROCKWOOL INTERNATIONAL A/S
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 August 2022 concerning maintenance of the
European Patent No. 2817374 in amended form.

Composition of the Board:

Chairman F. Rousseau
Members: O. Dury
W. Ungler

Summary of Facts and Submissions

- I. The appeals by opponents 1 and 2 (appellants 1 and 2) lie from the interlocutory decision of the opposition division concerning maintenance of European patent No 2 817 374 in amended form according to the claims of the main request filed with letter of 28 April 2022 and an adapted description.
- II. In their statements of grounds of appeal appellants 1 and 2 both requested that the decision of the opposition division decision be set aside and the patent be revoked.
- III. In the rejoinder to the statement of grounds of appeal the patent proprietor (respondent) initially requested that the appeals be dismissed (main request) or, in the alternative, that the patent be maintained in amended form according to any of the following auxiliary requests filed with the rejoinder to the statement of grounds of appeal (in that order): first auxiliary request, second auxiliary request, third auxiliary requests A and B, fourth auxiliary requests A and B and fifth auxiliary requests A and B.
- IV. The parties were summoned to oral proceedings and a communication pursuant to Article 15(1) RPBA was then issued by the Board.
- V. With letter of 12 December 2024 the respondent stated:

"The patent proprietor no longer approves the text in which the patent was maintained during the opposition proceedings and will not be submitting an amended text,

the patent is thus to be revoked (Art 113(2) EPC)".

- VI. With order of 12 December 2024 the oral proceedings were cancelled.

Reasons for the Decision

1. Under the provisions of Article 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. In the present case the respondent/proprietor unambiguously indicated in their letter dated 12 December 2024 that they withdrew their approval of the text in which the patent was maintained during the opposition proceedings and that they would not be submitting an amended text, with the consequence that the patent is to be revoked in accordance with the provisions of Article 113(2) EPC. This constitutes a disapproval of any version of the text of the then pending requests. Therefore, agreement by the patent proprietor pursuant to Article 113(2) EPC cannot be held to be given.
3. Under such circumstances 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 e.g. decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. European patent No. 2 817 374 is revoked.

The Registrar:

The Chairman:



D. Hampe

F. Rousseau

Decision electronically authenticated