BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [ ] To Chairmen
(D) [X] No distribution

D E C I S I O N
of 24 October 2003

Case Number: T 0184/03 - 3.3.7

Application Number: 90117192.6

Publication Number: 0416620

IPC: B32B 5/26

Language of the proceedings: EN

Title of invention:
Nonwoven fabric laminates

Patentee:
KIMBERLY-CLARK WORLDWIDE, INC.

Opponent:
Fiberweb North America, Inc.

Headword:
-

Relevant legal provisions:
EPC Art. 108
EPC R. 65(1)

Keyword:
"Missing statement of grounds"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0184/03 - 3.3.7

D E C I S I O N
of the Technical Board of Appeal 3.3.7
of 24 October 2003

Appellant: (Opponent)
Fiberweb North America, Inc.
840 S.E. Main Street
Simpsonville
South Carolina 29681 (US)

Representative:
Shanks, Andrew
Cruikshank & Fairweather
19 Royal Exchange Square
Glasgow G1 3AE (GB)

Appellant: (Proprietor of the patent)
KIMBERLY-CLARK WORLDWIDE, INC.
401 North Lake Street
Neenah, Wisconsin 54956 (US)

Representative:
Grünecker, Kinkeldey
Stockmair & Schwanhäuser
Anwaltssozietät
Maximilianstraße 58
D-80538 München (DE)

Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 6 December 2002 concerning maintenance of European patent No. 0416620 in amended form.

Composition of the Board:

Chairman: R. E. Teschemacher
Members: B. L. ter Laan
G. Santavicca

Summary of Facts and Submissions

I. The appeal contests the interlocutory decision of the Opposition Division of the European Patent Office posted on 6 December 2002 concerning maintenance of the European Patent No. 0 416 620 in amended form.

The opponent (appellant 01) filed a notice of appeal on 6 February 2003 and paid the fee for appeal on the same day.

No statement of grounds was filed. The notice of appeal contains nothing that could be regarded as a statement of grounds pursuant to Article 108 EPC.

II. By communication dated 9 May 2003, sent by registered letter with advice of delivery, the Registry of the Board informed the opponent that no statement of grounds had been filed and that the appeal could be expected to be rejected as inadmissible.

The opponent was informed about the possibility of filing a request for re-establishment of rights under Article 122 EPC and was invited to file observations within two months.

III. No answer from the opponent to the Registry's communication has been received within the given time limit.

IV. The proprietor (appellant 02) filed a notice of appeal on 17 February 2003 (Monday) and paid the fee for appeal on the same day. The statement setting out the grounds of appeal was received on 16 April 2003. The

proprietor requested that the contested decision be set aside since the Opposition Division should not have considered lack of novelty which had not been originally substantiated as ground for opposition.

By communication dated 24 July 2003, the Board informed the parties of the possible further proceedings in this case. The opponent's appeal would be rejected as inadmissible since no statement of grounds of appeal had been filed. Concerning the proprietor's appeal, the Board could not share the proprietor’s opinion that the contested decision should be set aside because the Opposition Division should not have considered lack of novelty.

The proprietor was invited to inform the Board within a period of two months whether the request for oral proceedings was maintained.

V. By letter dated 7 October 2003, the proprietor withdrew his appeal.

Reasons for the Decision

1. As no written statement setting out the grounds of appeal has been filed, the appeal of the opponent has to be rejected as inadmissible (Article 108 EPC in conjunction with Rule 65(1) EPC).

2. The declaration of the proprietor is duly noted. The appeal proceedings concerning the appeal of the proprietor are thus closed. The order of the contested decision becomes *res iudicata*.

Order

For these reasons it is decided that:

3. The appeal of the opponent is rejected as inadmissible.

4. The appeal proceedings are terminated by the withdrawal of the appeal of the proprietor.

The Registrar: The Chairman:

C. Eickhoff R. Teschemacher