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**Datasheet for the decision
of 6 October 2009**

Case Number: T 1637/06 - 3.5.02
Application Number: 99910348.4
Publication Number: 0983630
IPC: H02K 7/118
Language of the proceedings: EN

Title of invention:

Device for transmitting motion between the rotor of a synchronous permanent-magnet motor and a working part, said device having an increased free rotation angle

Patentee:

Askoll Holding S.r.l.

Opponents:

Hanning Elektro-Werke GmbH & Co. KG
Aweco Appliance Systems GmbH & Co. KG

Headword:

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Relevant legal provisions:

EPC Art. 113(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Basis of decision - request for revocation by proprietor"

Decisions cited:

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Catchword:

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Case Number: T 1637/06 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 6 October 2009

Appellant:
(Patent Proprietor)

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Representative:

Botti, Mario
Botti & Ferrari S.r.l.
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Respondents:
(Opponent 01)

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Representative:

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Patentanwälte
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(Opponent 02)

Aweco Appliance Systems GmbH & Co. KG
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Representative:

Roth, Klaus
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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 27 September 2006
revoking European Patent No. 0983630 pursuant
to Article 102(1) EPC 1973.**

Composition of the Board:

Chairman: M. Ruggiu
Members: J.-M. Cannard
H. Preglau

Summary of Facts and Submissions

- I. European Patent No. 0983630 was revoked by decision of the Opposition Division posted 27 September 2006.
- II. The decision of the Opposition Division was based upon the finding that the subject matter of claim 1 of the patent as granted, was implicitly disclosed in the application as filed (Article 123(2) EPC) and was novel, but did not involve an inventive step (Articles 52(1) and 56 EPC).
- III. Notice of appeal against this decision was filed by the proprietor on 18 October 2006, the appeal fee was paid the same day and the grounds of appeal were filed on 13 December 2006. It was requested that the decision under appeal be cancelled entirely because the claims as granted would be novel and inventive. The respondents (opponents) requested to dismiss the appeal. All parties requested oral proceedings as an auxiliary request.
- IV. Oral proceedings were held on 6 October 2009. In the course of the oral proceedings the appellant stated that he no longer approved the text in which the patent was granted and would not be submitting an amended text, meaning that all requests presented in appeal by the proprietor were withdrawn. He further stated that he did not withdraw his appeal.
- V. The respondents repeated their request to dismiss the appeal.

Reasons for the Decision

1. The appeal had been filed in accordance with the provisions of the EPC and is therefore admissible.
2. According to Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent. Following the declaration of the appellant (proprietor) during the oral proceedings there was no longer an approved text on which a decision in substance of the Board could have been based.
3. The intention of the appellant in this case is no longer to plead for the grant of a patent in whatsoever form, but instead to withdraw the approval of the original text and also to withdraw all further requests concerning possible versions of a patent to be maintained in an amended form. According to the jurisprudence of the Boards of Appeal, disapproval of a given text of claims is to be understood as a request for revocation (see Case Law of the Boards of Appeal of the European Patent Office, 5th edition 2006, VI.J.2. and VII.D.11.3.), which led to the revocation of the patent. As in the case under consideration the patent had already been revoked, the Board had only to confirm the decision of the Opposition Division by dismissing the appeal.

Order

For these reasons it is decided that :

The appeal is dismissed.

The Registrar:

The Chairman:

U. Bultmann

M. Ruggiu