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**Datasheet for the decision  
of 11 December 2008**

**Case Number:** T 0939/08 - 3.2.05

**Application Number:** 98955601.4

**Publication Number:** 1030945

**IPC:** D21G 1/00

**Language of the proceedings:** EN

**Title of invention:**

Method for producing calendared paper

**Patentee:**

Metso Paper, Inc.

**Opponent:**

Andritz Küsters GmbH

**Headword:**

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**Relevant legal provisions:**

EPC Art. 113(2)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Absence of text to be examined"

**Decisions cited:**

T 0073/84

**Catchword:**

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Case Number: T 0939/08 - 3.2.05

**DECISION**  
of the Technical Board of Appeal 3.2.05  
of 11 December 2008

**Appellant:** Andritz Küsters GmbH  
(Opponent) Eduard-Küsters-Straße 1  
D-47805 Krefeld (DE)

**Representative:** Henseler, Daniela  
Rethelstraße 123  
D-40237 Düsseldorf (DE)

**Respondent:** Metso Paper, Inc.  
(Patent Proprietor) Fabianinkatu 9 A  
FI-00130 Helsinki (FI)

**Representative:** Grams, Klaus Dieter  
Patentanwaltbüro  
Tiedtke-Bühling-Kinne & Partner  
Bavariaring 4  
D-80336 München (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
14 March 2008 concerning maintenance of  
European patent No. 1030945 in amended form.

**Composition of the Board:**

**Chairman:** W. Zellhuber  
**Members:** P. Michel  
E. Lachacinski

### **Summary of Facts and Submissions**

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 1 030 945 in amended form.
  
- II. The appellant requests that the decision under appeal be set aside and that the patent in suit be revoked in its entirety.
  
- III. In a letter dated 19 November 2008, the respondent (patent proprietor) withdrew consent to the text in which the patent in suit was maintained by the Opposition Division and stated that an amended text would not be submitted.

### **Reasons for the Decision**

- 1. Article 113(2) EPC requires that the European Patent Office may only examine, and decide upon, the European patent in the text agreed by the proprietor of the patent.
  
- 2. In the letter of 19 November 2008, the respondent withdrew consent to the text in which the patent in suit was maintained by the Opposition Division. As a result, there is no text which can be examined in respect of the impediments to patentability raised by the appellant (cf. T 73/84 (OJ EPO 1985, 241)).

**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. Meyfarth

W. Zellhuber