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**Datasheet for the decision
of 15 September 2015**

Case Number: T 0548/12 - 3.2.05

Application Number: 07012592.7

Publication Number: 1834789

IPC: B41J2/175

Language of the proceedings: EN

Title of invention:

Ink cartridge

Patent Proprietor:

Seiko Epson Corporation

Opponent:

Pelikan Hardcopy Production AG

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - revocation of the patent at request of the patent proprietor



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0548/12 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 15 September 2015

Appellant: Pelikan Hardcopy Production AG
(Opponent) Gewerbestrasse 9
8132 Egg (CH)

Representative: Stefan Markus Zech
Meissner, Bolte & Partner GbR
Widenmayerstrasse 47
80538 München (DE)

Respondent: Seiko Epson Corporation
(Patent Proprietor) 4-1, Nishishinjuku 2-chome
Shinjuku-ku,
Tokyo 163-0811 (JP)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
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81925 München (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 23 December 2011 rejecting the opposition filed against European patent No. 1834789 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman M. Poock
Members: S. Bridge
D. Rogers

Summary of Facts and Submissions

- I. The appeal was lodged against the decision of the opposition division rejecting the opposition filed against the European patent No. 1 834 789.
- II. The appellant (opponent) requests that the decision under appeal be set aside and that the patent in suit be revoked.
- III. With the letter dated 1 July 2015, the respondent (patent proprietor) withdraws all pending requests including the request for oral proceedings and no longer approves the text in which the patent was granted and requests that the European patent No. 1 834 789 be revoked.

Reasons for the Decision

1. Article 113(2) EPC, stipulates that the EPO may decide upon a European patent only in the text submitted to it or agreed to by the Patent Proprietor. This substantive requirement for maintaining the contested patent is not fulfilled in the present case.
2. If the patent proprietor himself requests that the patent be revoked (cf. Error: Unable to retrieve cross-reference value! above), the examination as to whether the grounds for opposition laid down in Article 100 EPC prejudice the maintenance of the patent as referred to in Article 101 EPC becomes not merely superfluous but impossible since the absence of a valid text of the patent (cf. 1. above) precludes any substantive examination of the alleged impediments to patentability.

3. As both the appellant and the respondent request that the decision under appeal be set aside and that the patent in suit be revoked, the board will use its power under article 111(1) EPC to revoke the patent without substantive examination of patentability.

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

M. Poock

Decision electronically authenticated