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Datasheet for the decision of 5 August 2019

Case Number: T 1846/15 - 3.2.05

Application Number: 09156202.5

Publication Number: 2080622

IPC: B41J2/175

Language of the proceedings: EN

Title of invention:
Printing material container, and board mounted on printing material container

Patent Proprietor:
Seiko Epson Corporation

Opponent:
Pelikan Hardcopy Production AG

Headword:

Relevant legal provisions:
EPC Art. 113(2)

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

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1846/15 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 5 August 2019

Appellant: (Patent Proprietor)	Seiko Epson Corporation 4-1, Nishishinjuku 2-chome Shinjuku-ku Tokyo-to (JP)
Representative:	Miller Sturt Kenyon 9 John Street London WC1N 2ES (GB)
Appellant: (Opponent)	Pelikan Hardcopy Production AG Haldenstrasse 28 8620 Wetzikon (CH)
Representative:	Jochen Herr Baker & McKenzie Theatinerstraße 23 80333 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 30 June 2015 concerning maintenance of European Patent No. 2080622 in amended form.**

Composition of the Board:

Chairman	M. Poock
Members:	P. Lanz
	G. Weiss

Summary of Facts and Submissions

I. The appeals of the patent proprietor as well as of the opponent lie against the interlocutory decision of the opposition division concerning the maintenance of European patent No. 2 080 622 in amended form.

II. The appeal of the opponent was directed to the revocation of the patent, whereas the patent proprietor's appeal originally aimed at maintaining the patent in an amended form other than the version held by the opposition division to meet the requirements of the EPC.

III. By letter dated 11 July 2019 the patent proprietor submitted the following statement:

"We hereby request revocation of the patent. We understand that this will terminate the appeal proceedings following decisions T 459/88 and T 237/86."

Reasons for the Decision

1. The patent proprietor, by requesting revocation of the patent in suit, disapproves the text in which it was granted, and the text underlying the decision under appeal, as well as the text of all the requests filed during the appeal proceedings, without submitting any other amended text on which the appeal proceedings could be based.

2. The text of the patent is at the disposition of the patent proprietor and a patent cannot be maintained against the patent proprietor's will (Article 113(2) EPC).

3. The absence of any agreed text of the patent precludes any examination as to the whether the grounds for opposition laid down in Article 100 EPC and pursued by the opponent prejudice the maintenance of the opposed patent.

4. Consequently, all parties to the appeal proceedings, i.e. the patent proprietor as well as the opponent, in unison aim at obtaining the revocation of the patent and there exists no longer any version of a text submitted and/or approved by the patent proprietor in which the patent can be maintained (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, IV.C.5.2).

The patent can therefore only be revoked.

5. This decision is taken without oral proceedings because the patent proprietor's auxiliary request for oral proceedings to discuss the maintenance of the opposed patent as well as the opponent's auxiliary request for oral proceedings have become obsolete.

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. Hampe M. Poock

Decision electronically authenticated