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Datasheet for the decision of 7 April 2020

Case Number: T 2085/16 - 3.2.04

Application Number: 08788450.8

Publication Number: 2232077

IPC: F04D25/06, F04D25/08, F04D29/68, F04F5/16, F04F5/46

Language of the proceedings: EN

Title of invention:
A FAN

Patent Proprietor:
Dyson Technology Limited

Opponent:
German Pool (Deutschland) GmbH

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

Boards of Appeal

Chambres de recours

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Case Number: T 2085/16 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 7 April 2020

Appellant: (Opponent)	German Pool (Deutschland) GmbH Pappelallee 41 22089 Hamburg (DE)
Representative:	Vossius & Partner Patentanwälte Rechtsanwälte mbB Siebertstrasse 3 81675 München (DE)
Respondent: (Patent Proprietor)	Dyson Technology Limited Tetbury Hill Malmesbury Wiltshire SN16 0RP (GB)
Representative:	Booth, Andrew Steven Dyson Technology Limited Intellectual Property Department Tetbury Hill Malmesbury Wiltshire SN16 0RP (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 4 July 2016 concerning maintenance of the European Patent No. 2232077 in amended form.**

Composition of the Board:

Chairman	A. de Vries
Members:	C. Kujat
	T. Bokor

Summary of Facts and Submissions

I. The appeal lies from the interlocutory decision of the opposition division, posted on 4 July 2016 concerning maintenance of the European Patent No. 2 232 077 in amended form pursuant to Article 101(3)(a) EPC.

II. Opposition was filed under Articles 100(a) and 100(c) EPC. The opposition division held that the patent in an amended form and the invention to which it related met the requirements of the EPC.

III. The opponent filed its notice of appeal against the decision on 7 September 2016, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 14 November 2016.

IV. In preparation for oral proceedings the board issued a communication pursuant to Article 15(1) RPBA dated 16 October 2019 setting out its provisional opinion.

V. The respondent proprietor stated with letter dated 12 March 2020 its wish to actively revoke the patent with immediate effect, and that it would not be attending the oral proceedings. The oral proceedings scheduled for 20 May 2020 were cancelled.

Reasons for the Decision

1. The appeal is admissible.

2. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. It is settled jurisprudence that an explicit request of a proprietor to revoke its patent with immediate effect implies that it no longer approves the text in which the patent had been maintained, either as granted or amended, and will not be submitting an amended text (T 186/84, OJ EPO 1986, 79, cited in CLBA, 9th edition 2019, IV.D.2). The Board interprets the proprietor's request for revocation likewise, that they no longer approve the text of the upheld patent and are not submitting an amended text. The agreement required by Article 113(2) EPC is thus deemed not to exist.

   There is therefore no text of the patent which the Board could consider in the appeal. The proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to 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:

G. Magouliotis A. de Vries

Decision electronically authenticated