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Datasheet for the decision
of 5 February 2020

Case Number: T 1724/17 - 3.2.04

Application Number: 09827899.7

Publication Number: 2358244

IPC: A47J31/40

Language of the proceedings: EN

Title of invention:
BEVERAGE MAKER

Patent Proprietor:
BUNN-O-MATIC CORPORATION

Opponent:
UNILEVER N.V. / UNILEVER PLC

Headword:

Relevant legal provisions:
EPC R. 84(1), 100(1)

Keyword:
Lapse of patent in all designated states - termination of
appeal proceedings

Decisions cited:

Catchword:

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Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1724/17 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 5 February 2020

Appellant: (Patent Proprietor)	BUNN-O-MATIC CORPORATION 1400 Stevenson Drive Springfield, Illinois 62703 (US)
Representative:	Lavoix Bayerstrasse 83 80335 München (DE)
Respondent: (Opponent)	UNILEVER N.V. / UNILEVER PLC Weena 455/Unilever House, 100 Victoria Embankment 3013 AL Rotterdam/London EC4Y 0DY (NL)
Representative:	Fijnvandraat, Arnoldus Unilever Patent Group Bronland 14 6708 WH Wageningen (NL)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 26 April 2017 revoking European patent No. 2358244 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	G. Martin Gonzalez
Members:	C. Kujat
	W. Van der Eijk

Summary of Facts and Submissions

I.   The appellant-proprietor lodged an appeal, received on
        30 June 2017, against the decision of the Opposition
        Division posted on 26 April 2017 revoking European
        patent No. 2358244 pursuant to Article 101(3)(b) EPC,
        and simultaneously paid the appeal fee. The statement
        setting out the grounds of appeal was received on
        6 September 2017.

II.   Oral proceedings, originally set for 29 June 2020, were
        cancelled by the Board with communication of
        5 November 2019.

III.   In a communication dated 5 November 2019 the sole
        appellant and patent proprietor was informed that the
        patent had lapsed for all the designated Contracting
        States and that the appeal proceedings might be
        continued at the request of the appellant, provided
        that a request to this effect was filed within two
        months of notification of the communication, and that
        in case of no answer within that period, the
        proceedings will be terminated without a decision on
        the merits of the appeal.

IV.   The appellant did not request continuation of the
        proceedings.

Reasons for the Decision

1.   Pursuant to Rule 84(1) EPC in conjunction with Rule
        100(1) EPC, opposition-appeal proceedings are
        discontinued after the European Patent has lapsed,
        unless the opponent files a request for their
        continuation within two months of being notified of the
        lapse by the European Patent Office.

        However, if - as in the present case - the patent
        proprietor is the appellant, it would be inappropriate
        to allow the opponent-respondent to decide whether the
        appeal proceedings shall be continued. For this reason,
        Rule 84(1) EPC has to be applied mutatis mutandis in
        such opposition-appeal proceedings so that it is the
        patent proprietor as the appellant who can request that
        the appeal proceedings be continued (see Case Law of
        the Boards of Appeal, 9th edition 2019, III.Q.1.2.2 and
        the decisions cited therein).

2.   Since, after having been informed of the lapse of the
        patent, no such request was filed by the appellant-
        proprietor, the Board concludes that the proceedings
        can be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar: The Chairman:

G. Magouliotis   G. Martin Gonzalez

Decision electronically authenticated