

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 25 April 2023**

Case Number: T 1973/21 - 3.2.04

Application Number: 05076181.6

Publication Number: 1600091

IPC: A47L9/02

Language of the proceedings: EN

Title of invention:

Suction nozzle for vacuum cleaner or the like

Patent Proprietor:

New Ermes Europe S.r.l.

Opponent:

Wessel-Werk 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:

T 0186/84

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1973/21 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 25 April 2023

Appellant: Wessel-Werk GmbH
(Opponent) Im Bruch 2
51580 Reichshof (Wildbergerhütte) (DE)

Representative: Andrejewski - Honke
Patent- und Rechtsanwälte Partnerschaft mbB
An der Reichsbank 8
45127 Essen (DE)

Respondent: New Ermes Europe S.r.l.
(Patent Proprietor) Via Risorgimento, 19
21020 Crosio della Valle (VA) (IT)

Representative: Colombo, Stefano Paolo
Marchi & Partners S.r.l.
Via Vittor Pisani, 13
20124 Milano (IT)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
6 September 2021 concerning maintenance of the
European Patent No. 1600091 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: G. Martin Gonzalez
O. Loizou

Summary of Facts and Submissions

The appeal was filed by the appellant opponent against the decision of the opposition division to maintain the patent in amended form.

The appellant opponent requested to set aside the decision under appeal and revoke the patent. They auxiliarily requested oral proceedings.

In their letter dated 4 April 2023, the respondent proprietor declared that they will not attend the oral proceedings and requested that the patent be revoked.

Thereupon, oral proceedings scheduled for 12 July 2023 were cancelled.

Reasons for the Decision

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.

As variously stated in case law, a request of the patent proprietor themselves during opposition proceedings to revoke their patent is equivalent to a withdrawal of agreement to the text of the patent and of all pending requests, cf. Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022 (CLBA), IV.D.2 and **T186/84** OJ 1986, 79, cited therein.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (CLBA, IV.D.2).

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