

Publication in the Official Journal Yes / No

File Number: T 798/90 - 3.2.3
Application No.: 84 306 416.3
Publication No.: 0 137 762
Title of invention: Sole construction for footwear

Classification: A43B 13/16, A43B 17/02

D E C I S I O N
of 25 April 1991

Proprietor of the patent: New Balance Athletic Shoe, Inc.
Opponent: Puma AG

Headword:

EPC Articles 102(3a), 113(2)

Keyword: Revocation requested by the proprietor of the patent

Headnote



Europäisches
Patentamt

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Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : T 798/90 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 25 April 1991

Appellant :
(Opponent)

Puma AG
Würzburger Str. 13
D-8522 Herzogenaurach (DE)

Representative :

Hufnagel, Walter, Dipl.-Ing., Dipl.-
Wirtsch.-Ing.
Dorner & Hufnagel Patentanwälte
Bad Brückenauer Str. 19
D-8500 Nürnberg 90 (DE)

Respondent :
(Proprietor of the patent)

New Balance Athletic Shoe, Inc.
38-42 Everett Street
Boston
Massachusetts 02134 (US)

Representative :

Read, Matthew Charles
Venner Shipley & Co.
368 City Road
London EC1V 2QA (GB)

Decision under appeal :

Decision of the Opposition Division of the
European Patent Office dated 1 August 1990
rejecting the opposition filed against European
patent No. 137 762 pursuant to Article 102(2)
EPC.

Composition of the Board :

Chairman : C.T. Wilson
Members : R. Gryc
W. Moser

Summary of Facts and Submissions

- I. In its decision dated 1 August 1990 the Opposition Division maintained the European patent No. 137 762 in amended form.
- II. The Appellants (Opponents) appealed against the decision of the Opposition Division on 2 October 1990, requesting that the patent be revoked. The appeal fee was paid on 2 October 1990 and the statement of grounds filed on 3 December 1990.
- III. In a letter dated 4 April 1991 the Respondents (proprietors of the patent) likewise requested revocation of the patent.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. The Respondents' request the revocation of their European patent. This has to be construed as a statement meaning that they no longer approve of the text in which the patent was granted and that they also refrain from submitting an amended text (cf. decision T 186/84; OJ EPO 1986, 79).
3. Since it follows from the provision according to Article 113(2) EPC that a European patent cannot be maintained against the proprietor's will, the present European patent has, therefore, to be revoked (cf. T 73/84; OJ EPO 1985, 241).

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The European patent No. 137 762 is revoked.

The Registrar:



N. Maslin

The Chairman:



C.T. Wilson