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**Datasheet for the decision  
of 22 February 2019**

**Case Number:** T 0766/16 - 3.2.05

**Application Number:** 00121388.3

**Publication Number:** 1092546

**IPC:** B41J2/175

**Language of the proceedings:** EN

**Title of invention:**

Ink cartridge for ink-jet printing apparatus

**Patent Proprietor:**

Seiko Epson Corporation

**Opponent:**

Pelikan Hardcopy Production AG

**Relevant legal provisions:**

EPC 1973 Art. 102, 113(2)

**Keyword:**

Revocation at the request of the patent proprietor -  
withdrawal of the approval to the text of the patent as  
granted; decision T 0073/84 followed

**Decisions cited:**

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01



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Case Number: T 0766/16 - 3.2.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.05**  
**of 22 February 2019**

**Appellant:** Pelikan Hardcopy Production AG  
(Opponent) Gewerbestrasse 9  
8132 Egg (CH)

**Representative:** Meissner Bolte Partnerschaft mbB  
Widenmayerstrasse 47  
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**Respondent:** Seiko Epson Corporation  
(Patent Proprietor) 4-1, Nishishinjuku 2-chome,  
Shinjuku-ku  
Tokyo 163-0811 (JP)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
8 March 2016 concerning maintenance of the  
European Patent No. 1092546 in amended form.**

**Composition of the Board:**

**Chairman** M. Poock  
**Members:** S. Bridge  
G. Weiss

## **Summary of Facts and Submissions**

- I. The appeal is directed against the interlocutory decision of the opposition division stating that European patent No. 1 092 546 in amended form according to auxiliary request 6A meets the requirements of the European Patent Convention.
- II. Opposition had been filed against the patent as a whole based on article 100(a) EPC (lack of novelty, Article 54 EPC 1973, and lack of inventive step, Article 56 EPC 1973) and Articles 100(b) and 100(c) EPC.
- III. The appellant (opponent) requested that the patent be revoked.
- IV. With letter of 21 February 2019 the respondent (patent proprietor) informed the European Patent Office that they no longer approve of the granted text of the patent or of any amended form and requested that the patent is revoked and that the request for oral proceedings is withdrawn.

## **Reasons for the Decision**

1. During the appeal proceedings, with letter of 21 February 2019, the patent proprietor explicitly withdrew their approval of the text of the granted patent or of any amended form and at the same time requested that the patent be revoked and withdrew its request for oral proceedings.

There is therefore no text of the patent on the basis of which the board can consider the appeal. Under Article 113(2) EPC the European Patent Office must

consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent (requirement of approval). This principle has to be strictly observed also in opposition and opposition appeal proceedings as well.

2. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will. This means that the patent proprietor will not be submitting an amended text, and wishes to prevent any text whatever of the patent from being maintained.
3. In the case of T 73/84 (OJ EPO 1985, 241; see especially Headnote and Reasons), the board of appeal has already decided that, if the proprietor of a European patent states in opposition or appeal proceedings that he no longer approves the text in which the patent was granted and will not be submitting an amended text, the patent is to be revoked. This approach was confirmed inter alia by decisions T 186/84 (OJ EPO 1986, 79), T 237/86 (OJ EPO 1988, 261), T 459/88 (OJ EPO, 1990, 425) and T 655/01 (not published).
4. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out in the above-mentioned decisions. The patent must therefore be revoked.

**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:



N. Schneider

M. Poock

Decision electronically authenticated