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**Datasheet for the decision
of 15 January 2019**

Case Number: T 1513/16 - 3.2.07

Application Number: 10727389.8

Publication Number: 2467302

IPC: B65D5/74, B65D5/06

Language of the proceedings: EN

Title of invention:

SEALED PACKAGE FOR POURABLE FOOD PRODUCTS

Patent Proprietor:

Tetra Laval Holdings & Finance S.A.

Opponents:

SIG Technology AG
Elopak Systems AG

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, T 1244/08, T 0483/10, T 1111/10, T 2405/12

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1513/16 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 15 January 2019

Appellant: Tetra Laval Holdings & Finance S.A.
(Patent Proprietor) Avenue Général-Guisan 70
1009 Pully (CH)

Representative: D'Angelo, Fabio
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Appellant: SIG Technology AG
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Representative: Cohausz & Florack
Patent- & Rechtsanwälte
Partnerschaftsgesellschaft mbB
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Appellant: Elopak Systems AG
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Representative: Turner, Richard Charles
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 May 2016 concerning maintenance of the
European Patent No. 2467302 in amended form.

Composition of the Board:

Chairman I. Beckedorf
Members: V. Bevilacqua
 A. Beckman

Summary of Facts and Submissions

- I. The appeals of the patent proprietor as well as of both opponents lie against the interlocutory decision of the opposition division maintaining European patent No. 2 467 302 in amended form.
- II. The appeals of the two opponents were directed to the revocation of the patent, whereas the patent proprietor's appeal was originally directed to maintaining the patent in an amended form other than the version held by the opposition division to meet the requirements of the EPC.
- III. The patent proprietor, while withdrawing its appeal and requesting a partial reimbursement of the appeal fee, requested with letter dated 8 November 2018 "the revocation of the above identified patent".

Reasons for the Decision

1. The patent proprietor, by withdrawing its appeal and requesting revocation of the patent in suit disapproves the text in which it was granted, and the text in which it was maintained by the opposition division, as well as the text of all the requests filed during the appeal proceedings, without filing any other amended text on which further prosecution of the appeal could be based.
2. The text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will (Article 113(2) EPC).

The absence of any agreed text of the patent precludes any examination as to the whether the grounds for opposition laid down in Article 100 EPC and pursued by the opponents prejudiced the maintenance of the opposed patent.

Consequently, all parties to the appeal proceedings, i.e. the patent proprietor as well as the opponents, in unison aim at obtaining the revocation of the patent and there exists no longer any version of a text submitted and/or approved by the patent proprietor in which the patent can be maintained (see e.g. T 186/84, OJ EPO 1986, 79; T 1244/08; T 483/10; T 1111/10; T 2405/12; see also Case Law of the Boards of Appeal, 8th edition 2016, IV.C.5.2)

3. The patent can therefore only be revoked.
4. This decision is taken without oral proceedings because the patent proprietor's auxiliary request for oral proceedings to discuss the maintenance of the opposed patent as well as the opponents' auxiliary requests for oral proceedings have become obsolete.

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. Nachtigall

I. Beckedorf

Decision electronically authenticated