

Internal distribution code:

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

**Datasheet for the decision
of 15 July 2022**

Case Number: T 2775/18 - 3.2.06

Application Number: 10002592.3

Publication Number: 2218811

IPC: D04H3/00, D04H1/54, D04H1/56,
D01F8/04, D01D5/00, D01D5/08

Language of the proceedings: EN

Title of invention:
Polyethylene-based, soft nonwoven fabric

Patent Proprietor:
Fitesa Germany GmbH

Opponents:
Oerlikon Textile GmbH & Co. KG
Carl Freudenberg KG

Headword:

Relevant legal provisions:
EPC Art. 113(2), 101

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

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 2775/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 15 July 2022

Appellant: Oerlikon Textile GmbH & Co. KG
(Opponent 1) Postfach 110240
42862 Remscheid (DE)

Representative: Keenway Patentanwälte Neumann Heine Taruttis
PartG mbB
Postfach 10 33 63
40024 Düsseldorf (DE)

Appellant: Carl Freudenberg KG
(Opponent 2) Höhnerweg 2-4
69469 Weinheim (DE)

Representative: Banse & Steglich
Patentanwälte PartmbB
Patentanwaltskanzlei
Herzog-Heinrich-Straße 23
80336 München (DE)

Respondent: Fitesa Germany GmbH
(Patent Proprietor) Woltorfer Strasse 124
31224 Peine (DE)

Representative: van Wijk, Alexander Pieter
Mainstay IP
Kallenkoterallee 82 A
8331 AJ Steenwijk (NL)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 October 2018 concerning maintenance of the
European Patent No. 2218811 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	P. Cipriano
	E. Kossonakou

Summary of Facts and Submissions

- I. An appeal was filed by each of opponent 1 and opponent 2 (appellants) against the interlocutory decision of the opposition division in which it held that European patent No. 2 218 811 in an amended form met the requirements of the EPC.
- II. The appellants requested that the interlocutory decision be set aside and the patent be revoked. In addition, the appellants requested reimbursement of their respective appeal fees and opponent 2 additionally requested an apportionment of costs in its favour.
- III. In reply to the appeals, the respondent (patent proprietor) requested that the appeals be dismissed or, in the alternative, that the patent be maintained on the basis of one of auxiliary requests 1 to 3.
- IV. The Board issued a summons to oral proceedings.
- V. In its letter dated 7 February 2022, the respondent declared that it no longer approved the text of the patent as granted or the text of the patent found allowable by the opposition division, and declared that it did not wish to file an amended text. It also stated its understanding that the patent would then be revoked.
- VI. The Board issued a communication informing the parties of the procedural situation as regards the outstanding requests of the appellants and its preliminary view on matters relating to those requests.

- VII. With letter dated 14 April 2022 opponent 2 withdrew its requests for reimbursement of the appeal fee and for an apportionment of costs.
- VIII. With letter dated 30 June 2022 opponent 1 also withdrew its request for reimbursement of the appeal fee.
- IX. The oral proceedings were subsequently cancelled.

Reasons for the Decision

1. 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 patent proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings.
2. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. With letter of 7 February 2022 the respondent withdrew its approval of any text for maintenance of the patent. There is therefore no text of the patent on the basis of which the Board can consider the appeal.
3. Thus, since there is no text of the patent on the basis of which the Board can consider the appeal, the only possibility is for the Board to revoke the patent as envisaged, albeit for other reasons, in Article 101 EPC.
4. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see

e.g. Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, 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:



D. Grundner

M. Harrison

Decision electronically authenticated