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**Datasheet for the decision  
of 29 November 2022**

**Case Number:** T 1110/19 - 3.2.06

**Application Number:** 09792180.3

**Publication Number:** 2334859

**IPC:** D04H1/44, D21F1/00

**Language of the proceedings:** EN

**Title of invention:**  
PERMEABLE BELT FOR NONWOVENS PRODUCTION

**Patent Proprietor:**  
Albany International Corp.

**Opponent:**  
Voith Patent GmbH

**Headword:**

**Relevant legal provisions:**  
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1110/19 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 29 November 2022**

**Appellant:** Voith Patent GmbH  
(Opponent) St. Pöltener Str. 43  
89522 Heidenheim (DE)

**Respondent:** Albany International Corp.  
(Patent Proprietor) 216 Airport Drive  
Rochester, NH 03867 (US)

**Representative:** Zacco Sweden AB  
P.O. Box 5581  
Löjtnantsgatan 21  
114 85 Stockholm (SE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 9 April 2019  
rejecting the opposition filed against European  
patent No. 2334859 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Dorfstätter  
J. Hoppe

## **Summary of Facts and Submissions**

- I. An appeal was filed by the appellant (opponent) against the decision of the opposition division in which it rejected the opposition against European patent No. 2 334 859.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. The respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained as granted (main request), or, as an auxiliary measure, that the patent be maintained in amended form based on auxiliary requests 1 to 4, in the given order as filed with letter dated 29 April 2022.
- IV. The parties were summoned to oral proceedings.
- V. During the oral proceedings before the Board, the respondent withdrew all pending claim requests and declared its disapproval of any text for maintenance of the patent.

## **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon a European patent only in the text submitted to it, or agreed, by the patent proprietor. Such an agreement cannot be deemed to exist where the patent proprietor states that it no longer approves the text of the patent, withdraws all pending requests, and proposes no text for maintenance of the patent.

2. In such a case, there is no text of the patent on the basis of which the Board can consider the appeal. Under 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, 10<sup>th</sup> edition 2022, 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