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Aktenzeichen / Case Number / N^o du recours : T 237/86
Anmeldenummer / Filing No / N^o de la demande : 79 100 858.4
Veröffentlichungs-Nr. / Publication No / N^o de la publication : 16 237

Bezeichnung der Erfindung: Twist roller guide device for rolling mill use
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : B 21 B 39/28

ENTSCHEIDUNG / DECISION

vom / of / du 11 June 1987

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Kotobuki Sangyo (respondent)

Einsprechender / Opponent / Opposant :

SMS Schloemann-Siemag

Stichwort / Headword / Référence : Abandoned patent/SMS

EPÜ / EPC / CBE Articles 101, 102, 110, 111

Kennwort / Keyword / Mot clé : "patent revoked as consequence of patentee
stating "We... abandon the ... patent"

Leitsatz / Headnote / Sommaire

When it is made clear to the Board of Appeal, whatever the form of words used, that the Appellant and the Respondent are agreed that a patent should be revoked, the Board may exercise its power under Article 111(1) EPC to revoke the patent. The statement "We herewith abandon the above patent", sent to the Board of Appeal by the patent proprietor during the appeal stage of an opposition, is in this case equivalent to a request that the patent be revoked.

Case Number : T 237 /86



D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 11 June 1987

Appellant :
(Opponent)

SMS Schloemann-Siemag AG
Eduard-Schloemann-Str. 4
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Representative :

Hemmerich, Friedrich Werner
Patentanwälte F.W. Hemmerich
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Respondent :
(Proprietor of the patent)

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Representative :

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Decision under appeal :

Decision of Opposition Division of the European
Patent Office dated 12 May 1986 rejecting
the opposition filed against European patent
No. 16 237 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : P. Delbecque

Member : G.D. Paterson

Member : F. Gumbel

Summary of Facts and Submissions

- I. In a decision dated 12 May 1986 the Opposition Division rejected the opposition filed against European patent No. 016 237 granted upon the subject-matter of European patent application No. 79 100 858.4.
- II. The Appellant appealed against this decision by telex on 9 July 1986, subsequently confirmed by a letter of the same date, paid the fee for appeal on 10 July 1986 and filed a statement of grounds of appeal on 11 September 1986, in which he requested that the patent be revoked.
- III. In a letter dated 12 January 1987 quoting the number of the appeal, the representative of the Respondent stated: "We herewith abandon the above patent". In a communication dated 27 January 1987 to the patent proprietor, the Registrar of the Board of Appeal stated that if he wished the Board to revoke the patent he should either withdraw consent to the text of the patent as granted, or request revocation of the patent. In a response the patent proprietor informed the Board of Appeal, by letter dated 4 February 1987, that he withdrew consent to the text of the patent as granted and did not intend to submit any other text.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. In the opinion of the Board, for the reasons set out below it was not necessary for the communication dated 27 January 1987 to have been sent to the Respondent, or for the Respondent to have filed his letter dated 4 February 1987 in reply. When, as in the present case, it is made quite

clear to the Board of Appeal (whatever the exact form of wording used) that both the Appellant and the Respondent are agreed that the patent should be revoked, the Board sees no difficulty in exercising its powers under Article 111(1) EPC, by deciding to revoke the patent.

3. The communication refers *inter alia* to paragraph 4 of Decision T 73/84 "Revocation at the instance of the patent proprietors/SMS" (OJ EPO 8/1985, page 241), which states that "the patent proprietor cannot terminate the (opposition) proceedings by telling the EPO that he is surrendering the European patent, since this is not provided for in the Convention", - and there is then a reference to the possibility of surrendering the patent via national patent offices and national law. Of course, once a European patent is granted by the EPO and becomes effective as a national patent in each designated state, the EPO loses its seisin of such a patent, and in that circumstance such a European patent can only be surrendered insofar as each national office and national law allows. But as soon as a notice of opposition to the granted European patent is filed in accordance with Article 99(1) EPC, the EPO regains seisin of that patent, for the purpose of examining and deciding upon such opposition in accordance with Articles 101 and 102 EPC; and after a decision on the opposition issued, if an appeal is filed in accordance with Articles 106 to 108 EPC, the Board of Appeal retains such seisin of the patent, in order to examine and decide upon the appeal in accordance with Articles 110 and 111 EPC.
4. In the present case, the statement "We herewith abandon the above patent" was sent by the Respondent to the Board of Appeal during the appeal stage of opposition proceedings in which the Appellant had previously requested revocation of the patent. In the context, this statement made it perfectly clear that the Respondent (the patent proprietor)

agreed that the patent should be revoked, and was thus equivalent to a request from the Respondent that the patent be revoked. This was in fact confirmed by the Respondent's subsequent letter dated 4 February 1987, but such confirmation was unnecessary.

5. Accordingly, having regard to the Respondent's letter dated 12 January 1987, in the exercise of its powers under Article 111(1) EPC the Board has decided to revoke the European patent.


Order

For these reasons, it is decided that:

The contested decision is set aside and the patent revoked.

The Registrar

The Chairman



B.A. Norman



P. Delbecque

