Datasheet for the decision of 11 December 2008

Case Number: T 0939/08 - 3.2.05
Application Number: 98955601.4
Publication Number: 1030945
IPC: D21G 1/00
Language of the proceedings: EN
Title of invention: Method for producing calendared paper
Patentee: Metso Paper, Inc.
Opponent: Andritz Küsters GmbH
Headword:
relevant legal provisions:
EPC Art. 113(2)
Relevant legal provisions (EPC 1973):
Keyword:
"Absence of text to be examined"
Decisions cited:
T 0073/84
Catchword:
Case Number: T 0939/08 - 3.2.05

DECISION of the Technical Board of Appeal 3.2.05 of 11 December 2008

Appellant: Andritz Küsters GmbH
(Opponent)
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D-47805 Krefeld   (DE)

Representative: Henseler, Daniela
Rethelstraße 123
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Respondent: Metso Paper, Inc.
(Patent Proprietor)
Fabianinkatu 9 A
FI-00130 Helsinki   (FI)

Representative: Grams, Klaus Dieter
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Composition of the Board:
Chairman: W. Zellhuber
Members: P. Michel
          E. Lachacinski
Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 1 030 945 in amended form.

II. The appellant requests that the decision under appeal be set aside and that the patent in suit be revoked in its entirety.

III. In a letter dated 19 November 2008, the respondent (patent proprietor) withdrew consent to the text in which the patent in suit was maintained by the Opposition Division and stated that an amended text would not be submitted.

Reasons for the Decision

1. Article 113(2) EPC requires that the European Patent Office may only examine, and decide upon, the European patent in the text agreed by the proprietor of the patent.

2. In the letter of 19 November 2008, the respondent withdrew consent to the text in which the patent in suit was maintained by the Opposition Division. As a result, there is no text which can be examined in respect of the impediments to patentability raised by the appellant (cf. T 73/84 (OJ EPO 1985, 241)).
Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: D. Meyfarth

The Chairman: W. Zellhuber