Datasheet for the decision of 22 February 2019

Case Number: T 0766/16 - 3.2.05

Application Number: 00121388.3

Publication Number: 1092546

IPC: B41J2/175

Language of the proceedings: EN

Title of invention:
Ink cartridge for ink-jet printing apparatus

Patent Proprietor:
Seiko Epson Corporation

Opponent:
Pelikan Hardcopy Production AG

Relevant legal provisions:
EPC 1973 Art. 102, 113(2)

Keyword:
Revocation at the request of the patent proprietor - withdrawal of the approval to the text of the patent as granted; decision T 0073/84 followed

Decisions cited:
T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01
DECISION
of Technical Board of Appeal 3.2.05
of 22 February 2019

Appellant: Pelikan Hardcopy Production AG
(Opponent)
Gewerbestrasse 9
8132 Egg (CH)

Representative: Meissner Bolte Partnerschaft mbB
Widenmayerstrasse 47
80538 München (DE)

Respondent: Seiko Epson Corporation
(Patent Proprietor)
4-1, Nishishinjuku 2-chome,
Shinjuku-ku
Tokyo 163-0811 (JP)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)


Composition of the Board:
Chairman M. Poock
Members: S. Bridge
G. Weiss
Summary of Facts and Submissions

I. The appeal is directed against the interlocutory decision of the opposition division stating that European patent No. 1 092 546 in amended form according to auxiliary request 6A meets the requirements of the European Patent Convention.

II. Opposition had been filed against the patent as a whole based on article 100(a) EPC (lack of novelty, Article 54 EPC 1973, and lack of inventive step, Article 56 EPC 1973) and Articles 100(b) and 100(c) EPC.

III. The appellant (opponent) requested that the patent be revoked.

IV. With letter of 21 February 2019 the respondent (patent proprietor) informed the European Patent Office that they no longer approve of the granted text of the patent or of any amended form and requested that the patent is revoked and that the request for oral proceedings is withdrawn.

Reasons for the Decision

1. During the appeal proceedings, with letter of 21 February 2019, the patent proprietor explicitly withdrew their approval of the text of the granted patent or of any amended form and at the same time requested that the patent be revoked and withdrew its request for oral proceedings.

There is therefore no text of the patent on the basis of which the board can consider the appeal. Under Article 113(2) EPC the European Patent Office must
consider and decide upon the European patent only in
the text submitted to it, or agreed, by the proprietor
of the patent (requirement of approval). This principle
has to be strictly observed also in opposition and
opposition appeal proceedings as well.

2. Since the text of the patent is at the disposition of
the patent proprietor, a patent cannot be maintained
against the proprietor's will. This means that the
patent proprietor will not be submitting an amended
text, and wishes to prevent any text whatever of the
patent from being maintained.

3. In the case of T 73/84 (OJ EPO 1985, 241; see especial-
ly Headnote and Reasons), the board of appeal has al-
ready decided that, if the proprietor of a European pa-
tent states in opposition or appeal proceedings that he
no longer approves the text in which the patent was
granted and will not be submitting an amended text, the
patent is to be revoked. This approach was confirmed
inter alia by decisions T 186/84 (OJ EPO 1986, 79),
T 237/86 (OJ EPO 1988, 261), T 459/88 (OJ EPO, 1990,
425) and T 655/01 (not published).

4. In the circumstances of the present case, the board
sees no reasons to deviate from the principles set out
in the above-mentioned decisions. The patent must
therefore be revoked.
Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: N. Schneider

The Chairman: M. Poock

Decision electronically authenticated