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Datasheet for the decision
of 5 February 2020

Case Number: T 1724/17 - 3.2.04
Application Number: 09827899.7
Publication Number: 2358244
IPC: A47J31/40
Language of the proceedings: EN

Title of invention:
BEVERAGE MAKER

Patent Proprietor:
BUNN-O-MATIC CORPORATION

Opponent:
UNILEVER N.V. / UNILEVER PLC

Headword:

Relevant legal provisions:
EPC R. 84(1), 100(1)

Keyword:
Lapse of patent in all designated states - termination of appeal proceedings
Decisions cited:

Catchword:
Case Number: T 1724/17 – 3.2.04

DECISION
of Technical Board of Appeal 3.2.04
of 5 February 2020

Appellant: BUNN-O-MATIC CORPORATION
(Patent Proprietor)
1400 Stevenson Drive
Springfield, Illinois 62703 (US)

Representative: Lavoix
Bayerstrasse 83
80335 München (DE)

Respondent: UNILEVER N.V. / UNILEVER PLC
(Opponent)
Weena 455/Unilever House, 100 Victoria Embankment
3013 AL Rotterdam/London EC4Y 0DY (NL)

Representative: Fijnvandraat, Arnoldus
Unilever Patent Group
Bronland 14
6708 WH Wageningen (NL)

Decision under appeal: Decision of the Opposition Division of the European Patent Office posted on 26 April 2017 revoking European patent No. 2358244 pursuant to Article 101(3)(b) EPC.

Composition of the Board:
Chairman G. Martin Gonzalez
Members: C. Kujat
W. Van der Eijk
Summary of Facts and Submissions

I. The appellant-proprietor lodged an appeal, received on 30 June 2017, against the decision of the Opposition Division posted on 26 April 2017 revoking European patent No. 2358244 pursuant to Article 101(3)(b) EPC, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 6 September 2017.

II. Oral proceedings, originally set for 29 June 2020, were cancelled by the Board with communication of 5 November 2019.

III. In a communication dated 5 November 2019 the sole appellant and patent proprietor was informed that the patent had lapsed for all the designated Contracting States and that the appeal proceedings might be continued at the request of the appellant, provided that a request to this effect was filed within two months of notification of the communication, and that in case of no answer within that period, the proceedings will be terminated without a decision on the merits of the appeal.

IV. The appellant did not request continuation of the proceedings.
Reasons for the Decision

1. Pursuant to Rule 84(1) EPC in conjunction with Rule 100(1) EPC, opposition-appeal proceedings are discontinued after the European Patent has lapsed, unless the opponent files a request for their continuation within two months of being notified of the lapse by the European Patent Office.

   However, if - as in the present case - the patent proprietor is the appellant, it would be inappropriate to allow the opponent-respondent to decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied mutatis mutandis in such opposition-appeal proceedings so that it is the patent proprietor as the appellant who can request that the appeal proceedings be continued (see Case Law of the Boards of Appeal, 9th edition 2019, III.Q.1.2.2 and the decisions cited therein).

2. Since, after having been informed of the lapse of the patent, no such request was filed by the appellant-proprietor, the Board concludes that the proceedings can be terminated.
Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:                                  The Chairman:

G. Magouliotis                                  G. Martin Gonzalez

Decision electronically authenticated