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**Datasheet for the decision  
of 22 June 2015**

**Case Number:** T 0220/12 - 3.2.02

**Application Number:** 05112409.7

**Publication Number:** 1637088

**IPC:** A61B19/08, A61B19/10, A61F13/02

**Language of the proceedings:** EN

**Title of invention:**  
Surgical Drape

**Patent Proprietor:**  
KCI Licensing, Inc.

**Opponent:**  
Smith and Nephew, Inc.

**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text or agreement to text withdrawn by patent proprietor -  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:**  
T 0073/84, T 0655/01, T 2177/12

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 0220/12 - 3.2.02

**D E C I S I O N  
of Technical Board of Appeal 3.2.02  
of 22 June 2015**

**Appellant:** Smith and Nephew, Inc.  
(Opponent) 1450 Brooks Road  
Memphis, TN 38116 (US)

**Representative:** Appleyard Lees  
15 Clare Road  
Halifax HX1 2HY (GB)

**Respondent:** KCI Licensing, Inc.  
(Patent Proprietor) 12930 IH 10 West  
San Antonio TX 78249-2248 (US)

**Representative:** Cordina, Kevin John  
Olswang LLP  
90 High Holborn  
London WC1V 6XX (GB)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
1 December 2011 concerning maintenance of  
European Patent No. 1637088 in amended form.

**Composition of the Board:**

**Chairman** E. Dufrasne  
**Members:** D. Ceccarelli  
M. Stern

## **Summary of Facts and Submissions**

- I. The opponent has appealed the Opposition Division's decision, dispatched on 1 December 2011, to maintain European patent No. 1 637 088 in amended form.
- II. The appellant has requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- III. In its letter dated 22 May 2015 the respondent made, inter alia, the following statements:

"The Patentee withdraws the Main, First, and Second auxiliary requests filed on 6 August 2012;

The Patentee disapproves the text of the granted patent and the text approved for grant by the Opposition division in their interlocutory decision of 1 December 2011;

The Patentee does not request maintenance of the Patent".

The main, and the first and second auxiliary requests mentioned in that letter constituted all the respondent's requests which were pending until then.

## **Reasons for the Decision**

1. Under Article 113(2) EPC "the European Patent Office shall examine, and decide upon, [...] the European patent only in the text submitted to it, or agreed, by [...] the proprietor of the patent".

2. In consideration of the respondent's submissions filed by letter dated 22 May 2015, there is no text of the patent on the basis of which the Board can examine the appeal.
3. In that letter, the respondent also made reference to decision T 655/01, stating that it applied to the patent.
4. In T 655/01, in accordance with a line of decisions going back to T 73/84, the board took the view that, if the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted and will not submit an amended text, the patent has to be revoked.

Therefore, it can be inferred that the respondent wishes revocation of the patent.

5. The Board sees no reasons to deviate from the established jurisprudence, also recently followed in T 2177/12, which even leads to acceding to the requests of both parties.

## 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. Hampe

E. Dufrasne

Decision electronically authenticated