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**Datasheet for the decision
of 20 February 2019**

Case Number: T 0989/13 - 3.2.02

Application Number: 07254329.1

Publication Number: 2014240

IPC: A61B17/00, A61B17/12

Language of the proceedings: EN

Title of invention:

Percutaneous catheter directed intravascular occlusion devices

Patent Proprietor:

AGA Medical Corporation

Opponents:

Occlutech Holding AG (CH) / Occlutech GmbH (DE)

Headword:

Relevant legal provisions:

EPC Art. 113(2), 101

Keyword:

Withdrawal of the approval to the text of the patent as granted - revocation of the patent

Decisions cited:

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,
T 1526/06, T 1960/12, T 1535/13, T 1898/14

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0989/13 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 20 February 2019

Appellants: Occlutech Holding AG (CH) / Occlutech GmbH (DE)
(Opponents) Vordergasse 3
8201 Schaffhausen (CH)

Representative: KIPA AB
P O Box 1065
251 10 Helsingborg (SE)

Respondent: AGA Medical Corporation
(Patent Proprietor) 5050 Nathan Lane North
Plymouth, MN 55442 (US)

Representative: Potter Clarkson
The Belgrave Centre
Talbot Street
Nottingham NG1 5GG (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 February 2013 concerning maintenance of the
European Patent No. 2014240 in amended form.**

Composition of the Board:

Chairman L. Bühler
Members: M. Stern
D. Ceccarelli

Summary of Facts and Submissions

- I. By way of its interlocutory decision, the Opposition Division held that European Patent No. 2 014 240 as amended met the requirements of the European Patent Convention.
- II. The joint opponents (joint appellants) filed an appeal against this decision requesting revocation of the patent.
- III. The patent proprietor (respondent) requested dismissal of the appeal as a main request and submitted auxiliary requests 1 to 6.
- IV. In a communication annexed to a summons to oral proceedings, the Board expressed its provisional opinion on the requests before it.
- V. With letter dated 18 February 2019, the respondent disapproved the text of the granted patent, indicating that it would not be submitting an amended text nor attending the scheduled oral proceedings and that it expected the patent to be revoked.
- VI. The oral proceedings were subsequently cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings.

2. The respondent, by withdrawing approval of the text of the granted patent, indicating that it would not be submitting an amended text and expecting the patent to be revoked, has thereby withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text of the patent, on the basis of which the Board can maintain the patent.

3. In view of the above, the Board concludes that the patent must be revoked as envisaged in Article 101 EPC and also expected by the respondent. This conclusion is also in line with established case law in, inter alia, T 73/84, T 186/84, T 237/86, T 459/88, T 655/01, T 1526/06, T 1960/12, T 1535/13 and T 1898/14.

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

L. Bühler

Decision electronically authenticated