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**Datasheet for the decision
of 14 November 2019**

Case Number: T 1066/14 - 3.4.01

Application Number: 05806045.0

Publication Number: 1802370

IPC: A61N1/08

Language of the proceedings: EN

Title of invention:
APPARATUS FOR RENAL NEUROMODULATION

Patent Proprietor:
Medtronic Ardian Luxembourg S.à.r.l.

Opponent:
Boston Scientific Scimed, Inc.

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - agreement to text withdrawn by patent proprietor - all requests withdrawn by patent proprietor - patent revoked

Decisions cited:
T 0073/84, T 0186/84, T 2528/10



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1066/14 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 14 November 2019

Appellant: Boston Scientific Scimed, Inc.
(Opponent) One Scimed Place
Maple Grove, MN 55311-1566 (US)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Respondent: Medtronic Ardian Luxembourg S.à.r.l.
(Patent Proprietor) 102 rue des Maraîchers
2124 Luxembourg (LU)

Representative: Bandpay & Greuter
30, rue Notre-Dame des Victoires
75002 Paris (FR)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 April 2014 concerning maintenance of the
European Patent No. 1802370 in amended form.**

Composition of the Board:

Chairman P. Scriven
Members: F. Neumann
J. Geschwind

Summary of Facts and Submissions

- I. In its interlocutory decision, the Opposition Division decided that European patent 1 802 370, as amended in accordance with the main request on file at that time, met the requirements of the EPC.
- II. The opponent appealed and requested that the patent be revoked.
- III. The proprietor (respondent) originally requested that the appeal be dismissed, but by letter of 4 November 2019 stated the following:

The patent proprietor no longer approves of the text of the patent as maintained by the opposition division in the interlocutory decision of April 8, 2014.

The patent proprietor hereby withdraws all pending requests (main request and auxiliary requests No.1-8), and also withdraws the request for oral proceedings.

No alternative requests were submitted.

- IV. In response, the opponent noted that the proprietor had not indicated that it would not be submitting an amended text.

Reasons for the Decision

1. Article 113(2) EPC stipulates that the EPO may decide upon a European patent only in the text submitted to it, or agreed to by the proprietor of the patent.
2. This substantive requirement is not fulfilled if the proprietor - as in the present case - expressly states that it withdraws its approval of the text of the amended patent held allowable by the Opposition Division and withdraws all pending requests without replacing any of them (see section III above).
3. There is thus no text of the patent on the basis of which the Board can consider the appeal. The fact that the proprietor did not explicitly declare that an amended text would not be submitted, does not affect this finding. In these circumstances, the appeal proceedings are to be terminated by a decision ordering the revocation of the patent, without going into the substantive issues (see e.g. decisions T 73/84 *Widerruf auf Veranlassung des Patentinhabers* OJ EPO 1985, 241; T 186/84 *Widerrufsantrag des Patentinhabers* OJ EPO 1986, 79; and T 2528/10).

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:



D. Hampe

P. Scriven

Decision electronically authenticated