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**Datasheet for the decision
of 29 March 2022**

Case Number: T 1062/17 - 3.2.06

Application Number: 08725368.8

Publication Number: 2109427

IPC: A61F13/00, A61M27/00

Language of the proceedings: EN

Title of invention:

A BREATHABLE INTERFACE SYSTEM FOR TOPICAL REDUCED PRESSURE

Patent Proprietor:

KCI Licensing, Inc.

Opponent:

Smith and Nephew, Inc.

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - revocation of the patent at request of the
patent proprietor - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

Catchword:



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Chambres de recours

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Case Number: T 1062/17 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 29 March 2022

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

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

Respondent: KCI Licensing, Inc.
(Patent Proprietor) P.O. Box 659508
San Antonio, TX 78265 (US)

Representative: Simmons & Simmons
City Point
One Ropemaker Street
London EC2Y 9SS (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 13 March 2017
rejecting the opposition filed against European
patent No. 2109427 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairwoman J. Hoppe
Members: P. Cipriano
M. Dorfstätter

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European patent No. 2 109 427. It requested that the decision under appeal be set aside and the patent be revoked.
- II. With its response, the respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary measure, that the patent be maintained according to one of the first to third auxiliary requests filed therewith.
- III. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion.
- IV. With letter dated 23 July 2020, the respondent filed new auxiliary requests 1 to 3 replacing its previous requests.
- V. With letter dated 25 March 2022, the respondent filed a new first auxiliary request.
- VI. Oral proceedings by videoconference were held on 29 March 2022, at the end of which the respondent withdrew all its requests and declared that it withdrew its approval to the text in which the patent was granted and in any amended form so that the patent could be revoked.

The appellant maintained its initial requests.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent and withdraws all pending requests.
3. There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see e.g. Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, IV.D.2).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



D. Grundner

J. Hoppe

Decision electronically authenticated