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**Datasheet for the decision
of 7 July 2022**

Case Number: T 1814/17 - 3.2.02

Application Number: 07753287.7

Publication Number: 1993652

IPC: A61F2/30, A61B17/135,
A61B17/80, A61M1/00, A61F2/36,
A61B17/88, A61M27/00, A61M37/00

Language of the proceedings: EN

Title of invention:
SYSTEM FOR ADMINISTERING REDUCED PRESSURE TREATMENT HAVING A
MANIFOLD WITH A PRIMARY FLOW PASSAGE AND A BLOCKAGE PREVENTION
MEMBER

Patent Proprietor:
KCI Licensing, Inc.

Opponents:
Smith and Nephew, Inc.
Paul Hartmann AG

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1814/17 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 7 July 2022

Appellant: 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)

Appellant: Smith and Nephew, Inc.
(Opponent 1) 1450 Brooks Road
Memphis, TN 38116 (US)

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

Appellant: Paul Hartmann AG
(Opponent 2) Paul-Hartmann-Strasse 12
89522 Heidenheim (DE)

Representative: DREISS Patentanwälte PartG mbB
Friedrichstraße 6
70174 Stuttgart (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 June 2017 concerning the maintenance of
European Patent No. 1 993 652 in amended form**

Composition of the Board:

Chairman	D. Ceccarelli
Members:	S. Böttcher
	Y. Podbielski

Summary of Facts and Submissions

- I. Both opponents and the proprietor filed an appeal against the interlocutory decision of the Opposition Division to maintain European patent No 1 993 652 on the basis of the third auxiliary request then on file.
- II. Oral proceedings before the Board took place on 7 July 2022.
- III. At the beginning of the oral proceedings, appellant 1 (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or that the patent be maintained on the basis of one of auxiliary requests 1-4 filed with the statement setting out the grounds of appeal dated 20 October 2017 or on the basis of auxiliary request 5 filed with the reply dated 5 March 2018.

Both appellants 2 and 3 (opponents 1 and 2) requested that the decision under appeal be set aside and the patent be revoked.

- IV. During the oral proceedings, the patent proprietor withdrew their appeal and all requests on file.

Reasons for the Decision

1. Article 113(2) EPC provides that the European Patent Office must 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. Since the text of the patent is at the disposition of the patent proprietor, their patent cannot be maintained against their will.
3. During the appeal proceedings the patent proprietor declared that they no longer wished to maintain their requests. By this, they unequivocally withdrew their approval of the text of the patent as granted or of the patent as amended according to any of the then pending auxiliary requests.
4. There is therefore no text of the patent on the basis of which the Board can consider compliance with the requirements of the EPC. Therefore, the decision under appeal must be set aside and the patent be revoked.

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

D. Ceccarelli

Decision electronically authenticated