

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 15 December 2020**

Case Number: T 1104/18 - 3.2.04

Application Number: 14179858.7

Publication Number: 2798948

IPC: A01K11/00, A01K29/00

Language of the proceedings: EN

Title of invention:

Method and system for monitoring the condition of livestock

Patent Proprietor:

Silent Herdsman Holdings Limited

Opponents:

DeLaval International AB
Smartbow GmbH
Nedap N.V.

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Basis of decision - text or agreement to text withdrawn by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:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1104/18 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 15 December 2020

Appellant: Silent Herdsman Holdings Limited
(Patent Proprietor) Unit 9000 Academy Park
Gower Street
Glasgow
G51 1PR (GB)

Representative: Haseltine Lake Kempner LLP
Redcliff Quay
120 Redcliff Street
Bristol BS1 6HU (GB)

Appellant: DeLaval International AB
(Opponent 1) P O Box 39
147 21 TUMBA (SE)

Representative: Gray, Helen Mary
ZACCO GmbH
Bayerstrasse 83
80335 München (DE)

Party as of right: Smartbow GmbH
(Opponent 2) Jutogasse 3
4675 Weibern (AT)

Representative: Mannion, Sally Kim
Zoetis UK Limited
First Floor, Birchwood Building
Springfield Drive
Leatherhead, Surrey KT22 7LP (GB)

Party as of right: Nedap N.V.
(Opponent 3) Parallelweg 2
7141 DC Groenlo (NL)

Representative: V.O.
P.O. Box 87930
Carnegieplein 5
2508 DH Den Haag (NL)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 March 2018 concerning maintenance of the
European Patent No. 2798948 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: G. Martin Gonzalez
W. Van der Eijk

Summary of Facts and Submissions

- I. The appellant-opponent 1 lodged an appeal, received on 30 April 2018, against the interlocutory decision of the Opposition Division posted on 8 March 2018 concerning maintenance of the European Patent No. 2798948 in amended form, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 12 July 2018.
- II. The respondent-proprietor also filed an appeal but withdrew it with letter of 29 June 2020.
- III. The Opposition Division held that the auxiliary request 9 before it met the requirements of the EPC.
- IV. The appellant-opponent 1 requests to set aside the decision under appeal and to revoke the patent. They auxiliarily request oral proceedings.

The opponents 2 and 3 as parties as of right have not made any submissions.
- V. With letter of 8 December 2020 the respondent-proprietor stated that they no longer approve the text with which the patent was granted and that they will not be submitting an amended text. They also withdrew all requests currently on file.

Reasons for the Decision

1. The appeal is admissible
2. 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.

Such an agreement cannot be deemed to exist if the respondent-proprietor expressly states that they no longer approve the text of the patent as granted and withdraw all pending requests, as they did with letter of 8 December 2020 in the present case.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. It is established case law that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues, see Case Law of the Boards of Appeal, 9th edition 2019 (CLBA) IV.D.2.

3. Since the Board decides in favour of the appellant-opponent 1, their request for oral proceedings, which was requested on a purely auxiliary basis, becomes moot.

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:



G. Magouliotis

A. de Vries

Decision electronically authenticated