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**Datasheet for the decision
of 24 October 2022**

Case Number: T 0154/19 - 3.2.06

Application Number: 14186269.8

Publication Number: 2818144

IPC: A61F13/00, A61M27/00, A61M1/00,
A61F13/02

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), 101

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



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Case Number: T 0154/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 24 October 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: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
16 November 2018 concerning maintenance of the
European Patent No. 2818144 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
J. Hoppe

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 2 818 144 met the requirements of the EPC.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. In its reply to the appeal, the respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary measure, that the patent be maintained on the basis of one of auxiliary requests 1 to 3.
- IV. The Board issued a summons to oral proceedings and a subsequent communication in which it gave its provisional opinion on several matters of the case.
- V. In its letter dated 2 September 2022, the respondent declared its withdrawal of approval of the text maintained by the opposition division, withdrew the main and auxiliary requests for the maintenance of the patent, and declared that no replacement requests were being filed.
- VI. The oral proceedings were subsequently cancelled.

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 patent 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, a patent cannot be maintained against the patent proprietor's will. With letter of 2 September 2022 the respondent withdrew its approval of any text for maintenance of the patent. There is therefore no text of the patent on the basis of which the Board can consider the appeal.
3. Thus, since there is no text of the patent on the basis of which the Board can consider the appeal, the only possibility is for the Board to revoke the patent as envisaged, albeit for other reasons, in Article 101 EPC.
4. 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, 10th edition 2022, 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 Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated