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**Datasheet for the decision
of 10 July 2023**

Case Number: T 2518/19 - 3.3.10

Application Number: 09819170.3

Publication Number: 2345433

IPC: A61L17/00, A61K38/00,
A61L31/00, A61P7/04, A61L31/04,
A61L31/14

Language of the proceedings: EN

Title of invention:
TISSUE PLUG

Patent Proprietor:
3-D Matrix, Ltd.

Opponent:
Potter Clarkson LLP

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Decisions cited:

T 0073/84, T 0186/84, T 1526/06, T 2405/12

Catchword:



Beschwerdekammern
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Case Number: T 2518/19 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 10 July 2023

Appellant: Potter Clarkson LLP
(Opponent) The Belgrave Centre
Talbot Street
Nottingham NG1 5GG (GB)

Representative: Potter Clarkson
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Nottingham NG1 6HQ (GB)

Respondent: 3-D Matrix, Ltd.
(Patent Proprietor) 3-2-4, Kojimachi
Chiyoda-ku
Tokyo 102-0083 (JP)

Representative: EIP
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London WC1V 6HU (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 July 2019 concerning maintenance of the
European Patent No. 2345433 in amended form.**

Composition of the Board:

Chair P. Gryczka
Members: R. Pérez Carlón
F. Blumer

Summary of Facts and Submissions

- I. The appeal lies from the decision of the opposition division which resulted in European patent No. 2 345 433 being maintained in amended form.
- II. With a letter dated 7 July 2023, the respondent-patent proprietor stated that it no longer approved of the text upon which the patent was maintained by the opposition division. It withdrew any other claim request, informed the board that it will not be submitting others. It stated that it awaited revocation of the patent without substantive examination.

Reasons for the Decision

1. The appeal is admissible.
2. The respondent withdrew its approval of the text of the patent as maintained after opposition proceedings. It further withdrew all other auxiliary requests, stated that no amended text will be submitted and that it awaits revocation of the patent without reference to the patentability issues. It relied on T 73/84 and the Case Law of the Boards of Appeal, 10th ed. 2022, IV.D. 2, page 1265.
3. Under Article 113(2) EPC, the European Patent Office must consider a European patent only in the text submitted to it, or agreed by the proprietor of the patent. There is, however, no text of the patent on the basis of which the board can consider this appeal.

Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained

against the proprietor's will.

If a patent proprietor withdraws its approval of the text of the patent as granted and of the text in which the patent was maintained and withdraws every other request on file, and requests revocation of the patent in suit it wishes to prevent any text whatever of the patent from being maintained.

4. In the case of T 73/84 cited by the respondent (OJ EPO 1985, 241, Headnote and Reasons), the board decided that, if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed, among others, by decisions T 186/84 (OJ EPO 1986, 79), T 1526/06 (not published in OJ EPO), T 2405/12 (not published in OJ EPO) and other more recent decisions (see Case Law of the Boards of Appeal, IV.D.2, third paragraph).
5. The patent must therefore be revoked without going into any substantive issue.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chair:



L. Malécot-Grob

P. Gryczka

Decision electronically authenticated