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**Datasheet for the decision
of 6 October 2023**

Case Number: T 3215/19 - 3.2.06

Application Number: 09717511.1

Publication Number: 2249761

IPC: A61F13/02, A61M1/00

Language of the proceedings: EN

Title of invention:

DRESSING FOR APPLYING REDUCED PRESSURE TO AND COLLECTING AND
STORING FLUID FROM A TISSUE SITE

Patent Proprietor:

KCI Licensing, Inc.

Opponent:

Smith & Nephew, Inc.

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Basis of decision - text or agreement to text withdrawn by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 3215/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 6 October 2023

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 & Nephew, Inc.
(Opponent) 1450 Brooks Road
Memphis, TN 38116 (US)

Representative: HGF
HGF Limited
1 City Walk
Leeds LS11 9DX (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 October 2019 concerning maintenance of the
European Patent No. 2249761 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
J. Hoppe

Summary of Facts and Submissions

- I. The patent proprietor and the opponent each filed an appeal against the interlocutory decision of the opposition division, in which the opposition division found that European patent No. 2 249 761 in an amended form met the requirements of the EPC.
- II. The parties were summoned to oral proceedings for 17 October 2023. With a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA 2020) the parties were informed of the Board's provisional opinion.
- III. With its letter of 3 October 2023, the proprietor withdrew approval of the text for grant. Furthermore, all requests on file, including the request for oral proceedings were withdrawn. With the letter of 4 October 2023 the proprietor withdrew its appeal.
- IV. The oral proceedings were cancelled.
- V. The appellant-opponent requested that the decision under appeal be set aside and the European patent be revoked.

Reasons for the Decision

1. According to Article 113(2) EPC the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. The proprietor has withdrawn its approval of the text of the patent as granted and all requests submitted during the appeal procedure. There is thus no text of the patent upon which maintenance of the patent could be based. Under these circumstances and in accordance with the case law of the boards of appeal the only option available to the Board is to revoke the patent according to Article 101 EPC (see for example T 2405/12 and decisions cited therein).

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