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**Datasheet for the decision
of 18 April 2023**

Case Number: T 0180/20 - 3.2.02

Application Number: 10774623.2

Publication Number: 2429623

IPC: A61M16/06, A61M16/08

Language of the proceedings: EN

Title of invention:
PATIENT INTERFACE AND ASPECTS THEREOF

Patent Proprietor:
Fisher & Paykel Healthcare Limited

Opponent:
ResMed Pty Ltd.

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Basis of decision - text or agreement to text withdrawn by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

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0180/20 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 18 April 2023

Appellant:

(Opponent)

ResMed Pty Ltd.
1 Elizabeth Macarthur Drive
Bella Vista NSW 2153 (AU)

Representative:

Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Respondent:

(Patent Proprietor)

Fisher & Paykel Healthcare Limited
15 Maurice Paykel Place
East Tamaki, Auckland 2013 (NZ)

Representative:

Kinkeldey, Daniela
Bird & Bird LLP
Maximiliansplatz 22
80333 München (DE)

Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 December 2019 concerning the maintenance of
European Patent No. 2429623 in amended form**

Composition of the Board:

Chairman

M. Alvazzi Delfrate

Members:

D. Ceccarelli

N. Obrovski

Summary of Facts and Submissions

I. The opponent appealed against the Opposition Division's decision that, account being taken of the amendments made by the patent proprietor during the opposition proceedings according to auxiliary request 5, the European patent and the invention to which it relates met the requirements of the EPC.

II. Oral proceedings before the Board took place on 18 April 2023.

The appellant requested that the decision under appeal be set aside and that the patent be revoked.

The respondent withdrew its consent to the text of the patent in any form.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office must examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Since the respondent withdrew its agreement to the text of the patent in any form, there is no text of the patent on which the Board can base its consideration of the appeal.
3. As held in T 73/84 (Headnote and Reasons) and confirmed in numerous subsequent decisions (Case Law of the Boards of Appeal, 10th edition 2022, III.B.3.3, first paragraph and IV.D.2, third paragraph), if the proprietor of a European patent states in opposition or appeal proceedings that it

no longer approves the text in which the patent was granted, and does not submit any amended text, the patent is to 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:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated