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**Datasheet for the decision
of 7 November 2022**

Case Number: T 1504/20 - 3.2.02

Application Number: 08748988.6

Publication Number: 2262408

IPC: A61B1/005, A61M25/01, A61M25/00

Language of the proceedings: EN

Title of invention:
AN INSTRUMENT FOR ENDOSCOPIC APPLICATIONS OR THE LIKE

Patent Proprietor:
Fortimedix Assets II B.V.

Opponent:
Steerable Instruments N.V.

Headword:

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



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Case Number: T 1504/20 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 7 November 2022

Appellant: Fortimedix Assets II B.V.
(Patent Proprietor) Urmonderbaan 22, Gebouw 250
6167 RD Geleen (NL)

Representative: Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Appellant: Steerable Instruments N.V.
(Opponent) Poortakkerstraat 9
9051 Sint-Denijs-Westrem (BE)

Representative: Gyi, Jeffrey Ivan
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Edgard Gevaertdreef 10 a
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 April 2020 concerning maintenance of the
European Patent No. 2262408 in amended form.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: K. Peirs
Y. Podbielski
S. Dennler
C. Schmidt

Summary of Facts and Submissions

The appeals were filed by the proprietor (appellant-proprietor) and the opponent (appellant-opponent) against the interlocutory decision of the opposition division finding that, on the basis of auxiliary request 12A then on file, the patent met the requirements of the EPC.

With its letter dated 25 October 2022 the appellant-proprietor withdrew its appeal. It also declared that it did not approve anymore of the text and claims of the patent in any amended form, and added that it trusted that the appeal proceedings would, as a consequence, be terminated and the patent be entirely revoked.

Reasons for the Decision

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 where - as in the present case - the appellant-proprietor expressly states that it no longer approves of the text and the claims of the patent in any amended form, and adds that the patent be revoked.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.2).

The appellant-proprietor requested that the appeal fee be reimbursed under Rule 103(1) (b) EPC. This legal provision

provides for the reimbursement of 100% of the appeal fee. However, Rule 103(1)(b) EPC is not applicable in the present case as it concerns the reimbursement of the appeal fee in case the appeal was withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired. Relevant for the present case is Rule 103(3)(a) EPC, because a date for oral proceedings had been set and the appeal has been withdrawn within one month of notification of the communication issued in preparation of the oral proceedings. Pursuant to Rule 103(3)(a) EPC, the appeal fee is to be reimbursed at 50%.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The appeal fee is reimbursed at 50%.

The Registrar:

The Chairman:



D. Hampe

M. Alvazzi Delfrate

Decision electronically authenticated