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**Datasheet for the decision
of 5 January 2023**

Case Number: T 0051/21 - 3.3.05

Application Number: 14163569.8

Publication Number: 2814082

IPC: H01M2/14, H01M2/16, H01M10/052

Language of the proceedings: EN

Title of invention:
Electrochemical cells with glass containing separators

Patent Proprietor:
Leclanché S.A.

Opponent:
Fisher Dr., Heinrich

Headword:
Coating method/LECLANCHE

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



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Chambres de recours

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Case Number: T 0051/21 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 5 January 2023

Appellant: Fisher Dr., Heinrich
(Opponent) Maximilianstr. 54
805838 München (DE)

Representative: Strehl Schübel-Hopf & Partner
Maximilianstrasse 54
80538 München (DE)

Respondent: Leclanché S.A.
(Patent Proprietor) 42 Avenue des Sports
1400 Yverdon-les-Bains (CH)

Representative: Tegethoff, Sebastian
Fortmann Tegethoff Patent- und Rechtsanwälte
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 11 November
2020 rejecting the opposition filed against
European patent No. 2814082 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman P. Guntz
Members: T. Burkhardt
G. Glod

Summary of Facts and Submissions

- I. The opponent's (appellant's) appeal lies from the opposition division's decision to reject the opposition against European patent 2 814 082 B.
- II. In its communication under Article 15(1) RPBA 2020 the board was of the preliminary opinion that the patent should be revoked.
- III. The patent proprietor (respondent) announced that it withdrew the patent, so the scheduled oral proceedings could be cancelled.
- IV. The board informed the parties that this withdrawal made it clear that the respondent no longer approved the text of the patent, which was equivalent to a request that the patent be revoked.
- V. The board cancelled the oral proceedings.
- VI. The appellant subsequently withdrew its request that the appeal fee be reimbursed, and the respondent its request that the appellant bear the cost of the proceedings.

Reasons for the Decision

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

2. In the context, the respondent's statement that it withdrew the patent, so the scheduled oral proceedings could be cancelled, makes it clear that the respondent no longer approved the text of the patent in suit, and was equivalent to a request that the patent be revoked.

This interpretation has not been contested.

3. There is therefore no text of the patent on the basis of which the board can consider the present appeal.
4. Under these circumstances, the patent can only be revoked as envisaged in Article 101 EPC (Case Law of the Boards of Appeal, 10th edn., 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:



C. Vodz

P. Guntz

Decision electronically authenticated