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**Datasheet for the decision  
of 16 April 2024**

**Case Number:** T 1165/21 - 3.2.06

**Application Number:** 08851879.0

**Publication Number:** 2214611

**IPC:** A61F13/02, A61F13/00, A61M1/00

**Language of the proceedings:** EN

**Title of invention:**  
WOUND DRESSING

**Patent Proprietor:**  
Smith & Nephew PLC

**Opponent:**  
KCI Licensing Inc.

**Headword:**

**Relevant legal provisions:**  
EPC 1973 Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 1165/21 - 3.2.06**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 16 April 2024**

**Appellant:** Smith & Nephew PLC  
(Patent Proprietor) 15 Adam Street  
London WC2N 6LA (GB)

**Representative:** Appleyard Lees IP LLP  
15 Clare Road  
Halifax HX1 2HY (GB)

**Appellant:** KCI Licensing Inc.  
(Opponent) P.O. Box 659508  
San Antonio , TX 78265 (US)

**Representative:** Simmons & Simmons  
City Point  
One Ropemaker Street  
London EC2Y 9SS (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
20 May 2021 concerning maintenance of the  
European Patent No. 2214611 in amended form.**

**Composition of the Board:**

**Chairman** T. Rosenblatt  
**Members:** P. Cipriano  
J. Hoppe

## **Summary of Facts and Submissions**

- I. In its interlocutory decision the opposition division found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 2 214 611 met the requirements of the EPC.
- II. Appeals were filed by both the proprietor and the opponent.
- III. The Board issued a summons to oral proceedings and a subsequent communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal.
- IV. Oral proceedings before the Board took place on 16 April 2024. During the oral proceedings, the appellant-proprietor withdrew its appeal and all pending claim requests, and declared its disapproval of any text for maintenance of the patent.
- 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. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it disapproves any text for the maintenance of the patent.
3. There is therefore no text of the patent upon which maintenance of the patent could be based. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent (Case Law of the Boards of Appeal of the European Patent Office, 10<sup>th</sup> edition 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:



D. Grundner

T. Rosenblatt

Decision electronically authenticated