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**Datasheet for the decision
of 27 March 2023**

Case Number: T 1834/21 - 3.2.04

Application Number: 11716470.7

Publication Number: 2556248

IPC: F03D7/04

Language of the proceedings: EN

Title of invention:

A WIND TURBINE

Patent Proprietor:

Vestas Wind Systems A/S

Opponent:

ENERCON GmbH

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Basis of decision - text or agreement to text withdrawn by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

Catchword:



Beschwerdekammern
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Case Number: T 1834/21 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 27 March 2023

Appellant: Vestas Wind Systems A/S
(Patent Proprietor) Hedeager 42
8200 Aarhus N (DK)

Representative: Inspicos P/S
Agern Allé 24
2970 Hørsholm (DK)

Appellant: ENERCON GmbH
(Opponent) Dreekamp 5
26605 Aurich (DE)

Representative: Eisenführ Speiser
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 August 2021 concerning maintenance of the
European Patent No. 2556248 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: G. Martin Gonzalez
C. Heath

Summary of Facts and Submissions

- I. The appeals were filed by the appellant (proprietor) and the appellant (opponent) against the interlocutory decision of the opposition division finding that, on the basis of the first auxiliary request, the patent in suit met the requirements of the EPC.
- II. Oral proceedings before the Board were held as a videoconference on 27 March 2023.
- III. In the course of the oral proceedings, the appellant proprietor declared that they withdrew their appeal and all claim requests on file and declared that there was no longer any agreed text of the patent.

The appellant opponent requested that the decision under appeal be set aside and the patent revoked in its entirety.

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 proprietor expressly withdraws all pending requests and declares that there is no longer any agreed text of the patent.

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 (Case Law of the Boards of Appeal of the European Patent Office, 10th 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:



G. Magouliotis

A. de Vries

Decision electronically authenticated