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**Datasheet for the decision
of 31 May 2024**

Case Number: T 0289/22 - 3.2.02

Application Number: 17157231.6

Publication Number: 3187209

IPC: A61M1/00

Language of the proceedings: EN

Title of invention:
SYSTEM FOR SEALING AN INCISIONAL WOUND

Patent Proprietor:
KCI Licensing, Inc.

Opponent:
Smith & Nephew, Inc.

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Basis of decision - text or agreement to text withdrawn by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
Boards of Appeal
Chambres de recours

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Case Number: T 0289/22 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 31 May 2024

Appellant: Smith & Nephew, Inc.
(Opponent) 1450 Brooks Road
Memphis, TN 38116 (US)

Representative: HGF
HGF Limited
1 City Walk
Leeds LS11 9DX (GB)

Respondent: KCI Licensing, Inc.
(Patent Proprietor) 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
9 December 2021 concerning maintenance of the
European Patent No. 3187209 in amended form.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: S. Böttcher
C. Schmidt

Summary of Facts and Submissions

- I. The European patent No. 3 187 209 was maintained in amended form by the decision of the opposition division. Against this decision an appeal was filed by the opponent.
- II. The appellant requested that the impugned decision be set aside and that the patent be revoked.
- III. With letter dated 10 May 2024 the patent proprietor (respondent) withdrew all requests for maintenance of the patent, and disapproved the text on which the patent was granted.

Reasons for the Decision

- 1. Article 113(2) EPC stipulates that the EPO may decide upon a European patent only in the text submitted to it, or agreed to by the patent proprietor. This principle, according to which the text of the patent is at the disposition of the proprietor, has to be strictly observed also in opposition appeal proceedings.
- 2. The patent is therefore to be revoked, without going into the substantive issues (Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, third paragraph and III.B.3.3, first paragraph).

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