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**Datasheet for the decision  
of 6 November 2025**

**Case Number:** T 1476/23 - 3.5.04

**Application Number:** 19159597.4

**Publication Number:** 3511062

**IPC:** A63H33/04, G06T19/00, A63F13/65

**Language of the proceedings:** EN

**Title of invention:**  
A TOY CONSTRUCTION SYSTEM

**Patent Proprietor:**  
LEGO A/S

**Opponent:**  
Draw & Code Ltd

**Relevant legal provisions:**  
EPC Art. 113(2)  
EPC R. 103(3) (c), 103(4) (a)

**Keyword:**  
Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked  
Reimbursement of appeal fee - partial reimbursement of appeal  
fee 25%

**Decisions cited:**

T 0073/17, T 0833/17



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1476/23 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 6 November 2025**

**Appellant:** LEGO A/S  
(Patent Proprietor) Aastvej 1  
7190 Billund (DK)

**Representative:** Guardian  
IP Consulting I/S  
Diplomvej, Building 381  
2800 Kgs. Lyngby (DK)

**Appellant:** Draw & Code Ltd  
(Opponent) 24 Hardman Street  
Liverpool  
Merseyside L1 9AX (GB)

**Representative:** HGF  
HGF Limited  
4th Floor, 1 City Square  
Leeds LS1 2AL (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
13 June 2023 concerning maintenance of the  
European Patent No. 3511062 in amended form.**

**Composition of the Board:**

**Chair** G. Decker  
**Members:** M. Paci  
A. Seeger

## **Summary of Facts and Submissions**

- I. The appeal is against the interlocutory decision of the opposition division dated 13 June 2023 that, account being taken of the amendments according to auxiliary request 1 then on file, European patent No. EP 3 511 062 and the invention to which it relates met the requirements of the EPC.
- II. Both the patent proprietor and the opponent filed an appeal against the decision.
- III. In its statement of grounds of appeal, the opponent requested that the decision under appeal be set aside and the patent be revoked.
- IV. In its statement of grounds of appeal, the patent proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or, alternatively, that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 5.
- V. The board issued a summons to oral proceedings, followed by a communication pursuant to Article 15(1) RPBA setting out the board's preliminary opinion.
- VI. In a letter of reply dated 27 October 2025, the patent proprietor made the following statements.

*"Referring to the appeal number T1476/23-3.5.04, the proprietor-appellant hereby withdraws the appeal filed on 22 August 2023, including any auxiliary requests submitted and the request for oral proceedings. The*

*proprietor-appellant further requests adequate reimbursement of the appeal fee under Rule 103 EPC.*

*Further to the withdrawal of the appeal, the proprietor herewith informs the Board that the proprietor no longer approves the text of the patent as granted. No amended text will be submitted. Thereby, the proprietor effectively requests revocation of the patent."*

VII. The board then cancelled the oral 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. The board understands from the patent proprietor's statements (see point VI. above) that the patent proprietor no longer approves the text of the patent as granted and does not pursue the patent according to any of the requests on file. Hence, there is no text of the patent on which the board can base its consideration of the opponent's appeal.
3. It is established case law of the boards of appeal that if the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted, and does not submit any amended text, the patent is to be revoked (Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, IV.D.2 and III.B.3.3).

4. Hence, the patent must be revoked, without any preceding substantive examination.

*Patent proprietor's request for "adequate reimbursement of the appeal fee under Rule 103 EPC"*

5. Rule 103(4) (a) EPC reads as follows.

*"The appeal fee shall be reimbursed at 25% if the appeal is withdrawn after expiry of the period under paragraph 3(a) but before the decision is announced at oral proceedings"*

In the case in hand, the patent proprietor's appeal was withdrawn more than one month after the notification of the communication pursuant to Article 15(1) RPBA issued by the board in preparation for the oral proceedings, but before the scheduled date of the oral proceedings.

Since no oral proceedings took place because the oral proceedings were cancelled, the board considers the condition *"before the decision is announced at oral proceedings"* in Rule 103(4) (a) EPC to be met because the withdrawal occurred before a decision could be announced at oral proceedings (see decisions T 0833/17 (point 7 of the Reasons) and T 73/17 (points 9.2 and 9.5 of the Reasons)).

For the above reasons, the board considers that the patent proprietor is entitled to a reimbursement of the appeal fee at 25% under Rule 103(4) (a) EPC.

A reimbursement of the appeal fee at 50% under Rule 103(3) (c) EPC is not possible for the reasons given in decision T 73/17 (point 9.2 of the Reasons).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The appeal fee paid by the patent proprietor is reimbursed at 25%.

The Registrar:

The Chair:



K. Boelicke

G. Decker

Decision electronically authenticated