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**Datasheet for the decision
of 7 January 2026**

Case Number: T 0466/24 - 3.3.02

Application Number: 18206002.0

Publication Number: 3466454

IPC: A61L24/00, A61L24/06,
A61L31/04, A61L31/14, A61L24/04

Language of the proceedings: EN

Title of invention:

RAPIDLY ACTING DRY SEALANT AND METHODS FOR USE AND MANUFACTURE

Patent Proprietor:

Baxter International Inc
Baxter Healthcare S.A.

Opponent:

Ethicon, Inc.

Headword:

BAXTER / DRY SEALANT

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

No text of the patent approved by the patent proprietor

Decisions cited:

T 0073/84, T 0186/84, T 0463/90, T 0798/90, T 0014/99,
T 1844/17, T 3007/18, T 0320/19, T 0411/20, T 2210/21,
T 1289/23

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0466/24 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 7 January 2026

Appellant: Baxter International Inc
(Patent Proprietor 1) One Baxter Parkway
Deerfield, IL 60015 (US)

Appellant: Baxter Healthcare S.A.
(Patent Proprietor 2) Thurgauerstrasse 130
8152 Glattpark (Opfikon) (CH)

Representative: Potter Clarkson
Chapel Quarter
Mount Street
Nottingham NG1 6HQ (GB)

Appellant: Ethicon, Inc.
(Opponent) 1000 U.S. Route 202
Raritan NJ 08869 (US)

Representative: Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 January 2024 concerning maintenance of the
European Patent No. 3466454 in amended form.**

Composition of the Board:

Chairman M. O. Müller
Members: M. Maremonti
 B. Burm-Herregodts

Summary of Facts and Submissions

- I. The appeals by the opponent and the patent proprietor are against the opposition division's interlocutory decision, according to which European patent No. 3 466 454 ("the patent") as amended in the form of auxiliary request 2, the claims of which were filed during first oral proceedings held before the opposition division on 14 September 2023, and the invention to which it relates, meets the requirements of the EPC.
- II. In its statement of grounds of appeal and its reply to the patent proprietor's appeal, the opponent submitted that the claimed subject-matter extended beyond the content of the application as filed, was not clear and not sufficiently disclosed, lacked novelty and an inventive step. It requested that the appealed decision be set aside and that the patent be revoked.
- III. In its statement of grounds of appeal and its reply to the opponent's appeal, the patent proprietor rebutted the opponent's arguments and requested that the appealed decision be set aside and that the patent be maintained in amended form on the basis of the claims of the main request or, alternatively, the claims of one of auxiliary requests 1 to 11, all requests having been filed with the reply to the opponent's appeal.
- IV. The board summoned the parties to oral proceedings to be held on 13 January 2026.
- V. By letter dated 11 November 2025, the patent proprietor withdrew its approval of the text of the patent as granted. Moreover, it withdrew all the auxiliary requests filed during these proceedings and stated that it would not be submitting any amended text. The patent

proprietor further stated that it was its understanding that the oral proceedings would be cancelled and that the patent would be revoked.

VI. By communication dated 20 November 2025, the board 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. Since the patent proprietor withdrew its approval of the text in which the patent was granted and also withdrew all claim requests on file there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the Boards of Appeal (see e.g. T 73/84, OJ EPO 1985, page 241, T 186/84, OJ EPO 1986, page 79, T 463/90, T 798/90, T 14/99, T 1844/17, T 3007/18, T 320/19, T 411/20, T 2210/21 and T 1289/23; see also Case Law of the Boards of Appeal, 11th Edition 2025, III.B.3.3 and IV.D.2) that under these circumstances the patent is to be revoked without further substantive examination. There are also no ancillary issues that would have to be dealt with by the board in the present case.

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:



U. Bultmann

M. O. Müller

Decision electronically authenticated