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Datasheet for the decision of 1 September 2026

Case Number: T 0596/24 - 3.2.02

Application Number: 13785941.9

Publication Number: 3054914

IPC: A61J15/00, G06F9/00, A61M5/142

Language of the proceedings: EN

Title of invention:
ENTERAL FEEDING SYSTEM

Patent Proprietor:
N.V. Nutricia

Opponent:
Fresenius Kabi Deutschland GmbH

Headword:
Withdrawal of agreement to text of the patent

Relevant legal provisions:
EPC Art. 113(2)
EPC R. 103(4)(c)

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It can be changed at any time and without notic

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked
Request for oral proceedings withdrawn - oral proceedings cancelled
Reimbursement of 25% of the appeal fees.

Decisions cited:
T 0517/17, T 0488/18

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Case Number: T 0596/24 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 1 September 2026

Appellant: (Patent Proprietor)	N.V. Nutricia Eerste Stationsstraat 186 2712 HM Zoetermeer (NL)
Representative:	Nederlandsch Octrooibureau P.O. Box 29720 2502 LS The Hague (NL)
Appellant: (Opponent)	Fresenius Kabi Deutschland GmbH Else-Kröner-Strasse 1 61352 Bad Homburg (DE)
Representative:	Fresenius Kabi Deutschland GmbH Patent Department Borkenberg 14 61440 Oberursel (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 23 February 2024 concerning maintenance of the European Patent No. 3054914 in amended fo rm.**

Composition of the Board:

Chairman	M. Alvazzi Delfrate
Members:	A. Medeiros Gaspar
	W. Ungler

Summary of Facts and Submissions

I. Both the opponent and the proprietor appealed the Opposition Division's interlocutory decision that the patent amended according to an auxiliary request met the requirements of the Convention.

II. The opponent requested that the contested decision be set aside and the patent revoked (main request).

III. The proprietor requested that the contested decision be set aside and that the opposition be rejected, i.e. that the patent be maintained as granted (main request), or, alternatively, that the patent be maintained in amended form on the basis of one of ten auxiliary requests.

IV. Both parties also requested oral proceedings, should the Board consider their main request not allowable.

V. Summonses to oral proceedings before the Board were issued.

VI. In a communication under Articles 15(1) RPBA, the Board expressed the preliminary, non-binding view that none of the requests of the proprietor was allowable.

VII. Within one month of notification of this communication, the proprietor withdrew all their pending requests, including the request for oral proceedings. They also indicated that they no longer approved the text of the patent maintained by the Opposition Division according to its interlocutory decision. They requested partial refund of the appeal fee under Rule 103(1)(b) EPC.

VIII. The oral proceedings were cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. Since the text of the patent is at the disposition of the proprietor, a patent cannot be maintained against the proprietor's will.

3. As the patent proprietor withdrew all their requests and indicated that they no longer approved the text of the patent found allowable by the Opposition Division, there is no text on the basis of which the Board can consider the opponent's appeal.

4. These proceedings must, then, be terminated with a decision ordering revocation of the patent without substantive examination as to patentability (cf. Case Law of the Boards of Appeal 11th edition, IV.D.2., third paragraph).

5. The proprietor also withdrew their request for oral proceedings. Additionally, in view of the conclusion under point 4, above, the condition for the opponent's request for oral proceedings does not apply.

6. Consequently, the oral proceedings were cancelled and this decision is issued on the basis of the written proceedings.

7. Since the proprietor's withdrawal of the request for oral proceedings was made within one month of notification of the communication issued by the Board in preparation for the oral proceedings, both conditions of Rule 103 (4) (c) EPC, that "any request for oral proceedings is withdrawn ... and no oral proceedings take place", are met. It makes no difference that, for one of the appeals, the withdrawing party and the appealing party are not the same (cf. T517/17, reason 6; T488/18, reason 8).

8. Hence, both appeal fees are to be reimbursed at 25%.

Order

For these reasons it is decided that:

1. The decision is set aside.
2. The patent is revoked.
3. Both appeal fees are reimbursed at 25%.

The Registrar: The Chairman:

A. Chavinier-Tomsic M. Alvazzi Delfrate

Decision electronically authenticated