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**Datasheet for the decision  
of 13 March 2026**

**Case Number:** T 1138/24 - 3.2.07

**Application Number:** 16820066.5

**Publication Number:** 3400114

**IPC:** B25J15/00, B25J15/06, B25J15/10

**Language of the proceedings:** EN

**Title of invention:**  
SYSTEMS FOR ACQUIRING AND MOVING OBJECTS

**Patent Proprietor:**  
Berkshire Grey Operating Company, Inc.

**Opponent:**  
Winter, Brandl - Partnerschaft mbB

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Basis of decision - text or agreement to text withdrawn by  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

T 0073/84, T 2405/12, T 1815/13

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 1138/24 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 13 March 2026**

**Appellant:** Winter, Brandl - Partnerschaft mbB  
(Opponent) Alois-Steinecker-Straße 22  
85354 Freising (DE)

**Representative:** Winter, Brandl - Partnerschaft mbB  
Alois-Steinecker-Straße 22  
85354 Freising (DE)

**Respondent:** Berkshire Grey Operating Company, Inc.  
(Patent Proprietor) 140 South Road  
Bedford, MA 01730 (US)

**Representative:** Haseltine Lake Kempner LLP  
One Portwall Square  
Portwall Lane  
Bristol BS1 6BH (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
27 June 2024 concerning maintenance of the  
European Patent No. 3400114 in amended form.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** S. Watson  
E. Mille

## **Summary of Facts and Submissions**

- I. An appeal was filed by the opponent against the decision of the opposition division maintaining European patent No. 3 400 114 in amended form according to then auxiliary request 7. The patent proprietor did not file an appeal.
  
- II. The board issued a summons to oral proceedings together with a communication according to Article 15(1) RPBA on 18 December 2025. The board gave its preliminary opinion that *inter alia* the subject-matter of claim 1 of the main request (previous auxiliary request 7) and the first auxiliary request appeared to lack novelty (Article 54 EPC), that the second to eleventh auxiliary requests were likely to be rejected in view of the prohibition of *reformatio in peius*, and that the conditions put forward for considering the conditional twelfth to seventeenth auxiliary requests were not met.
  
- III. With letter of 11 March 2026, the patent proprietor stated that it disapproved the text of the patent in any form and withdrew all its existing requests. The patent proprietor also withdrew its request for oral proceedings.
  
- IV. The scheduled oral proceedings were subsequently cancelled.

## **Reasons for the Decision**

1. According to 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 patent proprietor.

It is established case law that when a patent proprietor states in opposition or appeal proceedings that the text in which the patent was granted or maintained is no longer approved, and does not submit any amended text, that the patent is to be revoked (see Case Law of the Boards of Appeal, 11th edition 2025, III.B.3.3, first paragraph; T 73/84, Reasons 3 to 5).

2. In the present case, the patent proprietor has explicitly withdrawn its approval of the text of the patent in any form, i.e. including in the amended form found by the opposition division to meet the requirements of the EPC, and has also withdrawn all its auxiliary requests. There is therefore no text of the patent on the basis of which the board can consider the appeal of the opponent (T 2405/12, Reasons 2).
3. The patent is therefore to be revoked without any consideration of substantive issues (T 2405/12, Reasons 4, T 1815/13, Reasons 4).

## **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. Nachtigall

G. Patton

Decision electronically authenticated