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**Datasheet for the decision  
of 9 October 2012**

**Case Number:** T 1851/09 - 3.2.01

**Application Number:** 99114847.9

**Publication Number:** 0976590

**IPC:** B60G 15/07, F16F 1/04

**Language of the proceedings:** EN

**Title of invention:**  
Helical compression spring for a vehicle suspension

**Patentee:**  
CHUO HATSUJO KABUSHIKI KAISHA

**Opponent:**  
Verband der Deutschen Federnindustrie

**Headword:**  
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**Relevant legal provisions:**  
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**Relevant legal provisions (EPC 1973):**  
EPC Art. 113(2)

**Keyword:**  
"Patentee's request for revocation of the patent"

**Decisions cited:**  
T 0073/84

**Catchword:**  
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Case Number: T 1851/09 - 3.2.01

**DECISION**  
of the Technical Board of Appeal 3.2.01  
of 9 October 2012

**Appellant II:**  
(Patent Proprietor) CHUO HATSUJO KABUSHIKI KAISHA  
68, Kami-shioda,  
Aza,  
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Nagoya-shi, Aichi-ken, 458 (JP)

**Representative:** Kühn, Alexander  
Winter, Brandl, Fürniss, Hübner,  
Röss, Kaiser, Polte  
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**Appellant I:**  
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**Representative:** Haverkamp, Jens  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
14 July 2009 concerning maintenance of European  
patent No. 0976590 in amended form.

**Composition of the Board:**

**Chairman:** G. Pricolo  
**Members:** C. Narcisi  
T. Karamanli  
H. Geuss  
D. T. Keeling

## **Summary of Facts and Submissions**

- I. The European patent No. 0 976 590 was maintained in amended form by the decision of the Opposition Division posted on 14 July 2009. Against this decision an appeal was filed and the prescribed appeal fee was paid by the Opponent (Appellant I) and the Patentee (Appellant II) respectively on 9 September 2009 and 23 September 2009. The statement setting out the grounds of appeal was submitted by Appellant I on 20 November 2009 and by Appellant II on 23 November 2009.
- II. Oral proceedings were held on 9 October 2012. Both Appellants requested that the impugned decision be set aside and that the European patent be revoked.

## **Reasons for the Decision**

1. The appeals are admissible.
2. The appellant Patentee's request for revocation of the patent indicates that the Patentee withdrew its agreement to the text of the patent as granted and to the text in which the patent was maintained in amended form by the Opposition Division and that it did not intend to submit any other text for the maintenance of the patent in amended form.
3. Article 113(2) EPC 1973, however, stipulates that the EPO may decide upon a European patent only in the text submitted to it, or agreed by the Patentee. This substantive requirement for maintaining the contested patent is not fulfilled in the present case and

therefore the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see e.g. decision T 73/84, OJ EPO 1985, 241).

**Order**

**For these reasons it is decided that:**

1. The decision is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

A. Vottner

G. Pricolo