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**Datasheet for the decision
of 25 June 2015**

Case Number: T 1516/11 - 3.3.10
Application Number: 07719328.2
Publication Number: 2035051
IPC: A61L27/54, A61L27/12, A61K38/08
Language of the proceedings: EN

Title of invention:

COMPOSITE PREPARATION PROCESS ON A BASIS OF BIOCERAMICS AND BIODEGRADABLE OR NON BIODEGRADABLE POLYMERS, CEMENTING AND/OR CARRIER SUBSTANCES CONTAINING ENCAPSULATED OR NON-ENCAPSULATED MICRO OR NANOPARTICULATED ANTIBIOTICS AND ANGIOSTENSIN (1-7) FOR TISSUE RESTITUTION AND PRODUCTS THEREFROM

Applicant:

UNIVERSIDADE FEDERAL DE MINAS GERAIS

Headword:

COMPOSITE/UNIVERSIDADE FEDERAL DE MINAS GERAIS

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - allowable (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1516/11 - 3.3.10

**D E C I S I O N
of Technical Board of Appeal 3.3.10
of 25 June 2015**

Appellant:
(Applicant)

UNIVERSIDADE FEDERAL DE MINAS GERAIS
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 3 March 2011
refusing European patent application No.
07719328.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman P. Gryczka
Members: J.-C. Schmid
T. Bokor

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examining Division refusing European patent application No. 07 719 328.2 with the International publication Number WO-A-2007/134419.
- II. The Examining Division held that the claims of the then pending request lacked clarity (Article 84 EPC) and contained matter that extended beyond the content of the application as filed (Article 123(2) EPC).
- III. With the statement of grounds of appeal, the Appellant filed a new set of claims (sole request), whose independent claim 1 reads as follows:

"1. A composite comprising:

- a. bioceramics selected from the group consisting of $\text{Ca}_5(\text{PO}_4)_2\text{OH}$, CaCO_3 , CaSO_4 , CaSO_2 , $\text{Ca}_3(\text{PO}_4)_2$, $\text{CaOSiO}_2(\text{NO}_3)_2$, $\text{Ca}_{10}(\text{PO}_4)_6(\text{OH})$
- b. biodegradable polymers selected from the group consisting of PLGA, PLA, PGA or combinations thereof, or a non-biodegradable polymer like PMMA,
- c. cementing and/or carrier substances,
- d. Antibiotics in concentration of 0.001% to 5% (w/w), and
- e. Angiotensin (1-7) from 1 μM to 50 μM ,

wherein the antibiotics and the angiotensin (1-7) are encapsulated in a polysaccharide and micro or nano-encapsulated in the biodegradable polymers."

- IV. With a communication dated 3 February 2015 accompanying the summons for oral proceedings on 25 June 2015, the

Board indicated *inter alia* that there was no support in the application as filed for the bioceramic being $\text{Ca}_5(\text{PO}_4)_2\text{OH}$ and, hence claim 1 contravened the requirement of Article 123(2) EPC.

- V. On 24 June 2015, the Appellant advised the Registrar of the Board by telephone that it will not be represented at the oral proceeding scheduled on 25 June 2015.
- VI. The Appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 to 9 filed with the statement of the grounds of appeal dated 28 June 2011. He also requested that the case be remitted to the Examining Division for further prosecution.
- VII. The oral proceedings before the Board took place on 25 June 2015 in the absence of the duly summoned Appellant. At the end of the oral proceeding, namely at 09:10, the decision of the Board was announced.
- VIII. With a fax dated 24 June 2015, but received by the EPO on 25 June 2015 at 11:22 the Appellant declared that he withdrew its application.

Reasons for the Decision

1. The appeal is admissible.
2. *Procedural matters*

The Appellant's fax with the intended withdrawal of the application was received by the EPO after the announcement of the Board's decision to dismiss the appeal. Accordingly, the withdrawal has no effect on

the present decision finally refusing the application, which took effect with its announcement.

3. *Amendments (Article 123(2) EPC)*

The Appellant was informed by the Board's communication accompanying the summons for oral proceedings of the objection under Article 123(2) EPC *inter alia* that the feature present in claim 1, that bioceramics are selected *inter alia* from $\text{Ca}_5(\text{PO}_4)_2\text{OH}$, has no basis in the application as filed.

In fact, claim 1 has been amended by precisising that the composite comprises bioceramics selected from *inter alia* $\text{Ca}_5(\text{PO}_4)_2\text{OH}$. There is no support in the application as filed for this feature. Therefore, claim 1 has been amended such as it extends beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC.

Already, for this reason the sole request presented by the Appellant must be refused.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Malécot-Grob

P. Gryczka

Decision electronically authenticated