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**Datasheet for the decision
of 7 May 2019**

Case Number: T 1624/15 - 3.2.08

Application Number: 09759847.8

Publication Number: 2349091

IPC: A61F2/16

Language of the proceedings: EN

Title of invention:

INTRAOcular LENS DELIVERY DEVICE HAVING A CARTRIDGE WITH AN
INTERNAL COATING

Patent Proprietor:

Alcon Research, Ltd.

Opponent:

Garberg, Morten

Headword:

Relevant legal provisions:

Keyword:

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1624/15 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 7 May 2019

Appellant: Garberg, Morten
(Opponent) c/o Hofmann Eitle
Arabellastrasse 4
81925 München (DE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
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81925 München (DE)

Respondent: Alcon Research, Ltd.
(Patent Proprietor) 6201 South Freeway, Mail Code TB4-8
Fort Worth, TX 76134-2099 (US)

Representative: Teipel, Stephan
Lederer & Keller
Patentanwälte Partnerschaft mbB
Unsöldstrasse 2
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
3 July 2015 concerning maintenance of the
European Patent No. 2349091 in amended form.**

Composition of the Board:

Chairwoman P. Acton
Members: M. Alvazzi Delfrate
C. Schmidt

Summary of Facts and Submissions

I. By its decision posted on 3 July 2015 the opposition division found that European patent No. 2 349 091, in amended form according to the main request then on file, and the invention to which it related met the requirements of the EPC.

II. The opponent (appellant) lodged an appeal against that decision in the prescribed form and within the prescribed time limit.

III. Oral proceedings before the Board of appeal were held on 20 September 2018.

IV. The appellant requested that the decision under appeal be set aside and that the patent be revoked. Moreover, it requested an adjournment of the oral proceedings.

The respondent (patent proprietor) requested that the appeal be dismissed and that the patent be maintained in the amended form agreed by the opposition division or, in the alternative, that the patent be maintained on the basis of auxiliary request 1 filed at the oral proceedings before the Board of Appeal.

The Board decided to grant the request for adjournment of oral proceedings, with a new date to be communicated to the parties.

V. By communication of 26 September 2018 the parties were summoned to oral proceedings to be held on 7 May 2019.

VI. By letter of 26 April 2019 the respondent declared that it did no longer approved either the text in which the patent was granted or in any amended form.

VII. The oral proceedings were cancelled by communication of 30 April 2019.

Reasons for the Decision

Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

Such an agreement cannot be deemed to exist where, as in the present case, the proprietor expressly states that it no longer approves the text in which the patent was granted or in any amended form.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, IV.C.5.2).

Order

For these reasons it is decided that:

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

The Registrar:

The Chairwoman:



I. Aperribay

P. Acton

Decision electronically authenticated