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**Datasheet for the decision
of 18 January 2017**

Case Number: T 1828/15 - 3.5.05

Application Number: 06710311.9

Publication Number: 1969507

IPC: G06F19/00, A61M1/16

Language of the proceedings: EN

Title of invention:

Medical apparatus with improved user interface

Patent Proprietor:

Gambro Lundia AB

Opponent:

B. Braun Avitum AG

Headword:

User interface/LUNDIA

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Revocation of the patent upon proprietor's request

Decisions cited:

T 0073/84, T 0186/84, T 0307/13



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1828/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 18 January 2017

Appellant: B. Braun Avitum AG
(Opponent) Carl-Braun-Str. 1
34212 Melsungen (DE)

Representative: Winter, Brandl, Fürniss, Hübner,
Röss, Kaiser, Polte - Partnerschaft mbB
Patent- und Rechtsanwaltskanzlei
Bavariaring 10
80336 München (DE)

Respondent: Gambro Lundia AB
(Patent Proprietor) no. 16, Magistratsvagen
22010 Lund (SE)

Representative: Ponzellini, Gianmarco
PGA S.p.A.
Via Mascheroni, 31
20145 Milano (IT)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 25 June 2015
rejecting the opposition filed against European
patent No. 1969507 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chair A. Ritzka
Members: K. Bengi-Akyuerek
D. Prietzel-Funk
P. Cretaine
G. Weiss

Summary of Facts and Submissions

- I. The appeal of the opponent lies from the opposition division's decision to reject the opposition filed against the present European patent as granted, having regard to the invoked opposition grounds of lack of patentability (Article 100(a) EPC in conjunction with Articles 52(2)(c), 54 and 56 EPC), insufficiency of disclosure (Articles 100(b) and 83 EPC) and added subject-matter (Articles 100(c) and 123(2) EPC).
- II. With its statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be revoked in its entirety. In addition, oral proceedings were requested as an auxiliary measure.
- III. In an annex to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board expressed its preliminary view that the subject-matter of claim 1 as granted did not involve an inventive step (Article 56 EPC 1973) since the features distinguishing it from the cited prior art represented a mere mathematical method within the meaning of Article 52(2)(a) EPC.
- IV. In its letter of reply of 11 January 2017, the respondent (patent proprietor) indicated the following:
 - "1. We withdraw all our previous requests, including our request for Oral Proceedings;
 2. We request that the opposed patent be revoked without going into substantive issues (see T186/84, OJ EPO 1986, 79, reasons point 5) as the Proprietor no longer approves the text as granted and does not intend to submit any other text for the

maintenance of the patent (see T73/84 OJ EPO, 1985, 241)."

- V. Oral proceedings scheduled for 16 February 2017 were then cancelled.

Reasons for the Decision

1. *Respondent's request for revocation of the patent*
 - 1.1 Pursuant to Article 113(2) EPC 1973, the EPO shall examine and decide upon a European patent only in the text submitted to it or agreed by the patent proprietor.
 - 1.2 However, in the present case, the proprietor (respondent) expressly stated that it no longer approved the text of the patent as granted and did not submit any other text for the maintenance of the opposed patent, and withdrew all pending requests including its request for oral proceedings (cf. point IV above). Consequently, there is no text of the opposed patent submitted or agreed by the proprietor within the meaning of Article 113(2) EPC 1973 on the basis of which the board could consider the appeal.
 - 1.3 It is established case law that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see e.g. T 73/84, OJ EPO 1985, 241, Headnote; T 186/84, OJ EPO 1986, 79, Headnote; T 307/13 of 16 July 2013, Reasons 2 to 4). The board has no reason in the present case to deviate from that consistent approach of the Boards of Appeal.

2. *Appellant's request for oral proceedings*

Given that the board accedes to the appellant's main request to set aside the decision under appeal and to revoke the patent in its entirety (cf. point II above), there has been no need to appoint oral proceedings which were only requested on an auxiliary basis (cf. statement setting out the grounds of appeal, section 1).

Order

For these reasons it is decided that:

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

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated