

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 7 May 2021**

**Case Number:** T 0757/17 - 3.2.08

**Application Number:** 08755967.0

**Publication Number:** 2152214

**IPC:** A61B17/32, A61F9/007

**Language of the proceedings:** EN

**Title of invention:**

SYSTEMS FOR TRANSVERSE PHACOEMULSIFICATION

**Patent Proprietor:**

Abbott Medical Optics Inc.

**Opponent:**

Geuder AG

**Relevant legal provisions:**

EPC Art. 101, 113(2)

**Keyword:**

Withdrawal of the approval of any text for maintenance of the patent

**Decisions cited:**

T 1960/12



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0757/17 - 3.2.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.08**  
**of 7 May 2021**

**Appellant:**

(Opponent)

Geuder AG  
Hertzstrasse 4  
69126 Heidelberg (DE)

**Representative:**

Patent- und Rechtsanwälte Ullrich & Naumann  
PartG mbB  
Schneidmühlstrasse 21  
69115 Heidelberg (DE)

**Respondent:**

(Patent Proprietor)

Abbott Medical Optics Inc.  
1700 E. St. Andrew Place  
Santa Ana, CA 92705-4933 (US)

**Representative:**

Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 27 January 2017  
rejecting the opposition filed against European  
patent No. 2152214 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairwoman**

P. Acton

**Members:**

G. Buchmann

C. Schmidt

## **Summary of Facts and Submissions**

- I. In its interlocutory decision dated 27 January 2017 the opposition division found that European patent No. 2 152 214 met the requirements of the EPC.
- II. An appeal against this interlocutory decision was filed by the appellant (opponent), requesting that the decision be set aside and the patent be revoked.
- III. In its reply of 3 October 2017, the respondent (patent proprietor) requested as a main request that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form according to one of the auxiliary requests 1 to 8 filed with its reply.
- IV. In preparation for oral proceedings to be held on 18 May 2021, the Board issued a communication expressing its provisional view on the case.
- V. In its letter dated 6 May 2021 the respondent declared that all its requests were withdrawn and that it withdrew its approval of any text for maintenance of the patent. Furthermore the respondent withdrew its request for oral proceedings and considered the opposition proceedings to be terminated.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be

strictly observed also in opposition and opposition appeal proceedings.

2. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. The respondent withdrew its approval of any text for maintenance of the patent. There is therefore no text of the patent on the basis of which the Board can consider the appeal. It is moreover clear that the respondent wishes to prevent any text whatsoever of the patent from being maintained.
3. However, the patent proprietor cannot have the proceedings terminated by stating that it is surrendering the European patent; surrender of a patent is mentioned in Rule 84 EPC as a possibility in national proceedings but is not provided for in the Convention for the procedure before the EPO. Also revocation at the request of the patent proprietor in the framework of opposition or opposition appeal proceedings is not possible, as it is expressly excluded by Article 105a(2) EPC.
4. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. The only possibility in such a case is for the Board to revoke the patent as envisaged, for other reasons, in Article 101 EPC.
5. In view of the above, the Board concludes that the patent must be revoked. This conclusion is also in line with case law developed by the Boards of Appeal (see T 1960/12 with reference to further case law).

6. The Board can take this decision in writing since the appellant's request for oral proceedings was made just in case that the Board would not be inclined to revoke the patent.

## 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:



C. Moser

P. Acton

Decision electronically authenticated