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**Datasheet for the decision
of 19 June 2019**

Case Number: T 2446/18 - 3.3.01

Application Number: 12797965.6

Publication Number: 2786139

IPC: G01N33/487

Language of the proceedings: EN

Title of invention:

HAND-HELD TEST METER WITH ANALYTICAL TEST STRIP EJECTION
MECHANISM

Patent Proprietor:

Lifescan Scotland Limited

Opponent:

Roche Diabetes Care GmbH

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84



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Case Number: T 2446/18 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 19 June 2019

Appellant: Lifescan Scotland Limited
(Patent Proprietor) Beechwood Park North
Inverness IV2 3ED (GB)

Representative: Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Appellant: Roche Diabetes Care GmbH
(Opponent) Sandhofer Strasse 116
68305 Mannheim (DE)

Representative: Herzog, Fiesser & Partner
Patentanwälte PartG mbB
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68167 Mannheim (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 July 2018 concerning the maintenance of the
European Patent No. 2786139 in amended form**

Composition of the Board:

Chairman A. Lindner
Members: M. Blasi
T. Sommerfeld

Summary of Facts and Submissions

- I. An appeal was lodged by the patent proprietor and the opponent against the interlocutory decision of the opposition division that European patent no. 2 786 139 in amended form and the invention to which it related met the requirements of the EPC.
- II. The patent proprietor, having duly filed notice of appeal and paid the required appeal fee, requested that the decision of the opposition division be set aside and that the patent be maintained as granted, i.e. that the opposition be rejected. Oral proceedings were requested as an auxiliary measure. Thereafter, the patent proprietor did not file any statement of grounds of appeal, but withdrew the appeal before expiry of the time limit for filing that statement. Accordingly, its appeal fee was reimbursed in full in accordance with Rule 103(1)(b) EPC.
- III. The opponent, in its statement of grounds of appeal, argued why the decision of the opposition division was not correct and submitted a number of documents. The opponent requested that the decision of the opposition division be set aside and the patent be revoked in its entirety. Oral proceedings were requested as an auxiliary measure.
- IV. In reply to the opponent's appeal, the patent proprietor stated that it withdrew the approval of the text in which the patent was granted or amended, confirmed that it would not be submitting an amended text, and requested the revocation of the patent.

Reasons for the Decision

1. The opponent's appeal complies with the requirements of Article 108 EPC and the provisions referred to in Rule 101 EPC and is therefore admissible. Hence, the withdrawal of the appeal by the patent proprietor did not terminate the appeal proceedings. Due to the withdrawal of its appeal, the patent proprietor lost its status as an appellant but remained party to the proceedings under Article 107 EPC.

2. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
 - 2.1 Since the patent proprietor withdrew the approval of the text in which the patent was granted or held allowable by the opposition division and confirmed that it would not be submitting an amended text, there is no text of the patent on the basis of which the board can consider compliance with the requirements of the EPC.

 - 2.2 Accordingly, in line with established case law of the boards of appeal based on *inter alia* decision T 73/84 (OJ EPO 1985, 241), the patent is to be revoked. There are also no remaining issues that would have to be dealt with by the board in the present appeal case.

3. Revocation of the patent complies with the requests of both parties and the present decision can therefore be taken without holding oral proceedings.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated