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**Datasheet for the decision  
of 26 September 2022**

**Case Number:** T 0549/20 - 3.5.03

**Application Number:** 10737533.9

**Publication Number:** 2596646

**IPC:** H04R25/00, G06K9/00

**Language of the proceedings:** EN

**Title of invention:**

Visually-based fitting of hearing devices

**Patent Proprietor:**

Sonova AG

**Opponent:**

GN Hearing A/S / Widex A/S / Oticon A/S

**Headword:**

Mental-snapshot fitting/SONOVA

**Relevant legal provisions:**

EPC Art. 78(1)(c), 101(3)(b), 113(2)  
RPBA 2020 Art. 12(8)

**Keyword:**

Decision in written proceedings - (yes): indication of non-attendance by proprietor - oral proceedings neither necessary nor expedient

Revocation of the patent - (yes): no claims on file

**Decisions cited:**

T 0073/84, T 0186/84



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 0549/20 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 26 September 2022**

**Appellant:** GN Hearing A/S / Widex A/S / Oticon A/S  
(Opponents) Lautrupbjerg 7  
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**Representative:** Betten & Resch  
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**Respondent:** Sonova AG  
(Patent Proprietor) Laubisrütistrasse 28  
8712 Stäfa (CH)

**Representative:** Qip Patentanwälte  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
16 December 2019 concerning maintenance of the  
European Patent No. 2596646 in amended form.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** K. Peirs  
F. Bostedt

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the opposition division to maintain the opposed patent in amended form on the basis of the proprietor's "auxiliary request I". Given the opposition division's positive assessment of that auxiliary request, there was no need to examine "auxiliary request II".
- II. The appellant (opponents) requested with the statement of grounds of appeal that the appealed decision be set aside and that the patent be revoked.
- III. The respondent (patent proprietor) requested with the written reply to the appeal that the appeal be dismissed. The claims of the patent as granted are not part of the present appeal since the patent proprietor did not file an appeal against the opposition division's decision.
- IV. The parties were summoned to oral proceedings before the board. A communication was issued under Article 15(1) RPBA 2020 including the board's negative preliminary opinion concerning inventive step (Article 56 EPC).
- V. In a written reply to the board's communication, the respondent indicated that it would not be attending the arranged oral proceedings. The respondent also withdrew the claim requests mentioned in point I above.
- VI. Subsequently, the oral proceedings were cancelled.

## Reasons for the Decision

1. After the parties were summoned to oral proceedings, the respondent indicated that it would not attend the oral proceedings (see point V above). Such a declaration is normally treated as being equivalent to a withdrawal of the request for oral proceedings, thereby obviating the need for oral proceedings. Given that the board does not consider the conduct of oral proceedings to be expedient either (cf. Article 116(1) EPC), the decision is handed down in written proceedings (Article 12(8) RPBA 2020).
2. The requirement of Article 78(1)(c) EPC that a European patent application should contain one or more claims also becomes applicable when a deciding body is to examine and decide upon a patent in amended form. It is therefore one of the requirements of the Convention within the meaning of Article 101(3)(a) and (b) EPC that the deciding body should take into account.
3. In the present case, the text of the patent as amended that was submitted by the patent proprietor under Article 113(2) EPC does not encompass any claims (see point V above).
4. This means that the opposed patent and the invention to which it relates does not meet at least one of the requirements of the EPC. Hence, the appeal proceedings are to be terminated (see e.g. **T 73/84**, OJ EPO 1985, 241 and **T 186/84**, OJ EPO 1986, 79) and the patent is to be revoked under Article 101(3)(b) EPC.

## 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:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated