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**Datasheet for the decision  
of 15 February 2024**

**Case Number:** T 1342/21 - 3.3.10

**Application Number:** 13725889.3

**Publication Number:** 2854882

**IPC:** A61L26/00

**Language of the proceedings:** EN

**Title of invention:**

OXIDIZED REGENERATED CELLULOSE HEMOSTATIC POWDERS AND METHODS  
OF MAKING

**Patent Proprietor:**

Ethicon, Inc

**Opponent:**

Baxter International Inc.

**Headword:**

**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Basis of decision - text or agreement to text withdrawn by  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 2518/19, T 1994/21

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 1342/21 - 3.3.10**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.10**  
**of 15 February 2024**

**Appellant:** Ethicon, Inc  
(Patent Proprietor) P.O. Box 151  
U.S. Route 22  
Somerville, NJ 08876 (US)

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

**Appellant:** Baxter International Inc.  
(Opponent) One Baxter Parkway  
Deerfield, IL 60015 (US)

**Representative:** SONN Patentanwälte GmbH & Co KG  
Riemergasse 14  
1010 Wien (AT)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
15 June 2021 concerning maintenance of the  
European Patent No. 2854882 in amended form.**

**Composition of the Board:**

**Chairman** P. Gryczka  
**Members:** A. Zellner  
L. Basterreix

## **Summary of Facts and Submissions**

- I. Notice of opposition against the European patent No. 2 854 882 has been filed on the basis of Article 100(a) EPC for lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC), of Article 100(b) EPC for lack of sufficiency of disclosure and of Article 100(c) EPC for added subject-matter.
- II. In its decision the opposition division came to the conclusion that claim 12 of the patent as granted (main request) and of auxiliary requests 1A to 7A had no basis in the application as filed, and that the requests did not meet the requirements of Article 123(2) EPC. The opposition division considered auxiliary request 8A to meet the requirements of Rule 80 EPC and Articles 123(2) and (3), 83, 54 and 56 EPC. The patent was thus maintained in amended form (Article 101(3) (a) EPC).
- III. The opponent and the patent proprietor lodged appeals against this decision.
- IV. In a communication under Article 15(1) RPBA the board informed the parties of its preliminary opinion on the factual and legal issues of the case.
- V. Oral proceedings before the board took place on 15 February 2024.
- VI. The appellant-opponent (the "opponent") requested that the decision under appeal be set aside and that the patent be revoked.

VII. During the written proceedings, and at the beginning of the oral proceedings before the board, the appellant-patent proprietor (the "patent proprietor") requested that the decision under appeal be set aside and that the patent be maintained as granted (main request), or, alternatively, that the patent be maintained on the basis of auxiliary requests 1A to 11A and 12 to 71, as filed with the statement setting out the grounds of appeal, and with letters dated 1 March 2021, 8 March 2022 and 5 May 2022.

During the course of the oral proceedings, the patent proprietor declared that they no longer approved the text of the contested patent, that they would not submit an amended text, and that all pending requests were withdrawn.

### **Reasons for the Decision**

1. The appeals are admissible.
2. Pursuant to Article 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. Due to the patent proprietor's declaration not to approve the text of the contested patent, not to submit an amended text, and to withdraw all pending requests, no agreement by the patent proprietor to a text of the patent can be deemed to exist for the board to decide upon.
4. Under these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent without substantive examination as to patentability (see Case Law of the Boards of Appeal of

the European Patent Office, 10th edition 2022, IV.D.2  
and the more recent decisions T 2518/19 and T1994/21).

## Order

### For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated