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**Datasheet for the decision
of 12 May 2023**

Case Number: T 1790/21 - 3.2.04

Application Number: 06757911.0

Publication Number: 1899016

IPC: A62B7/00, A61M16/12, A61M16/16,
A62B7/02, A61M16/10, A61M16/00

Language of the proceedings: EN

Title of invention:

A BREATHING ASSISTANCE APPARATUS WITH A MANIFOLD TO ADD
AUXILIARY GASES TO AMBIENT GASES

Patent Proprietor:

Fisher & Paykel Healthcare Limited

Opponent:

Openshaw & Co. Limited

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Basis of decision - text or agreement to text withdrawn by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:

Catchword:



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Case Number: T 1790/21 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 12 May 2023

Appellant: Fisher & Paykel Healthcare Limited
(Patent Proprietor) 15 Maurice Paykel Place
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Representative: Kinkeldey, Daniela
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Appellant: Openshaw & Co. Limited
(Opponent) 8 Castle Street
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Representative: Vossius & Partner
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 July 2021 concerning maintenance of the
European Patent No. 1899016 in amended form.**

Composition of the Board:

Chairman G. Martin Gonzalez
Members: S. Oechsner de Coninck
K. Kerber-Zubrzycka

Summary of Facts and Submissions

The appeals were filed by the proprietor and the opponent against the interlocutory decision of the opposition division to maintain the patent in amended form.

In the course of the oral proceedings held before the Board on 12 May 2023, the patent proprietor declared that it withdrew its approval to any possible text of the patent. It further withdrew all requests on file. It further withdrew its appeal.

The appellant opponent requested that the decision under appeal be set aside and that the patent be revoked.

Reasons for the Decision

Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

Such an agreement cannot be deemed to exist where - as in the present case - the proprietor expressly states that it no longer approves the text of the patent and withdraws all pending requests.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.2).

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:



G. Magouliotis

G. Martin Gonzalez

Decision electronically authenticated