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**Datasheet for the decision
of 23 April 2024**

Case Number: T 1880/21 - 3.5.03

Application Number: 15177659.8

Publication Number: 3122071

IPC: H04R25/00

Language of the proceedings: EN

Title of invention:

An in-the-ear hearing aid having combined antennas

Patent Proprietor:

GN Hearing A/S

Opponent:

Oticon A/S

Headword:

Revocation requested by proprietor/GN HEARING

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Revocation of the patent - (yes): no approved claims on file
Decision in written proceedings - (yes): oral proceedings
obsolete

Decisions cited:

T 0073/84, T 2405/12



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Case Number: T 1880/21 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 23 April 2024

Appellant: GN Hearing A/S
(Patent Proprietor) Lautrupbjerg 7
2750 Ballerup (DK)

Representative: Zacco Denmark A/S
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Appellant: Oticon A/S
(Opponent) Kongebakken 9
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Representative: Cohausz & Florack
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 August 2021 concerning maintenance of the
European Patent No. 3122071 in amended form.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: K. Peirs
C. Almberg
J. Eraso Helguera
R. Romandini

Summary of Facts and Submissions

- I. The appeals lie from the interlocutory decision of the opposition division to maintain the opposed patent in amended form in accordance with the proprietor's "1st auxiliary request" (Article 101(3)(a) EPC).
- II. The parties made the following requests:
- The appellant-proprietor requested that the decision under appeal be set aside and, as its **main request**, that the opposition be rejected, i.e. that the patent be maintained as granted. In the alternative, the proprietor requested that the opponent's **appeal be dismissed**, i.e. that the patent be maintained in amended form based on the set of claims found allowable by the opposition division. In the further alternative, the proprietor requested that the patent be maintained in amended form based on the set of claims according to one of seven auxiliary requests (**first to seventh auxiliary requests**). These seven auxiliary requests were filed with the written reply to the opponent's appeal.
 - The appellant-opponent requested that the decision under appeal be set aside and that the patent be revoked.
- III. The parties were summoned to oral proceedings before the board. A communication was issued under Article 15(1) RPBA including the board's preliminary opinion.

- IV. In response to the board's communication, the appellant-proprietor stated that it no longer approved the text in which the patent was granted and would not submit an amended text. In addition, it withdrew its request for oral proceedings.
- V. The board then cancelled the arranged oral proceedings.

Reasons for the Decision

1. Under Article 113(2) EPC, the EPO shall consider and decide upon the patent only in the text submitted to it, or agreed by, the proprietor of the patent. If the patent proprietor states in opposition or appeal proceedings that they no longer approve the text in which the patent was granted and will not be submitting an amended text, there is no text of the patent on the basis of which the board can consider the appeal. It is generally accepted that the patent is to be revoked in such a case (cf. **T 73/84**, Reasons 2; **T 2405/12**, Reasons 2 to 4).
2. The statement indicated in point IV above must be understood as a disapproval not only of the text as granted, but also of the text found allowable by the opposition division as well as the texts according to the first to seventh auxiliary requests already on file. Hence, the patent is to be revoked.
3. In view of the above, the board does not consider holding oral proceedings to be expedient in this case, and the condition for the appellant-opponent's request for oral proceedings does not apply. Thus, the board cancelled the 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 Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated