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**Datasheet for the decision
of 2 July 2024**

Case Number: T 1077/22 - 3.2.05

Application Number: 17178143.8

Publication Number: 3263316

IPC: B29C64/364, B29C64/153,
B29C64/25, B33Y30/00

Language of the proceedings: EN

Title of invention:

Three-dimensional printing and three-dimensional printers

Patent Proprietor:

VELO3D, Inc.

Opponents:

Nikon SLM Solutions AG
Concept Laser GmbH

Relevant legal provisions:

EPC Art. 113(2)
EPC R. 103(4)(c)

Keyword:

Withdrawal of the approval of the text of the patent
Partial reimbursement of appeal fee (yes)

Decisions cited:

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,
T 1012/15, T 1477/15, T 1785/16



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Case Number: T 1077/22 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 2 July 2024

Appellant III:
(Patent Proprietor)

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Appellant I:
(Opponent 1)

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Appellant II:
(Opponent 2)

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 March 2022 concerning maintenance of the
European Patent No. 3263316 in amended form.**

Composition of the Board:

Chairman P. Lanz
Members: T. Vermeulen
 B. Burm-Herregodts

Summary of Facts and Submissions

- I. Both opponents and the patent proprietor lodged an appeal against the interlocutory decision of the opposition division finding that European patent No. 3 263 316 as amended according to auxiliary request 2 met the requirements of the European Patent Convention.
- II. Appellants I and II (hereinafter: opponents 1 and 2) requested that the decision under appeal be set aside and that the patent be revoked.
- III. In its statement of grounds of appeal, appellant III (hereinafter: the patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims of the main request or of one of auxiliary requests 1 to 24 filed with its statement of grounds of appeal or, alternatively, to dismiss the opponents' appeals (auxiliary request 25).
- IV. A summons to oral proceedings was issued on 23 May 2023.
- V. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal issued on 31 May 2024, the parties were informed of the board's provisional opinion on the issues of the appeal.
- VI. By letter dated 12 June 2024, the patent proprietor informed the board that it "no longer approves the text in which the patent was granted" and that it withdraws "all requests, including all previous main and auxiliary claim requests" and "will not be filing any

new requests". The patent proprietor also acknowledged "that the oral proceedings will be cancelled, and that a decision to revoke the patent will be issued".

VII. Subsequently, the board cancelled the oral proceedings scheduled for 2 July 2024.

Reasons for the Decision

1. Under Article 113(2) EPC the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings (T 1477/15, Reasons 14). Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will.
2. During the appeal proceedings the patent proprietor explicitly withdrew its approval of the text of the granted patent, and withdrew all of its requests, including all previous main and auxiliary claim requests. Accordingly, none of the main request and auxiliary requests 1 to 24 filed with the statement of grounds of appeal are withheld. Nor is its request to dismiss the opponents' appeals, which it filed as auxiliary request 25 with the statement of grounds of appeal. There is therefore no text of the patent on the basis of which the board can consider the appeal.
3. Furthermore, the patent proprietor expressed its intention not to be filing any new requests. In the case T 73/84 (OJ EPO 1985, 241), it was decided that, if the proprietor of a European patent states in

opposition or appeal proceedings that it no longer approves the text in which the patent was granted and will not be submitting an amended text, the patent is to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 237/86 (OJ EPO 1988, 261), T 459/88 (OJ EPO, 1990, 425), T 655/01, T 1785/16, T 1012/15.

4. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out in the above-mentioned decisions. Therefore, the decision under appeal must be set aside and the patent be revoked.
5. Furthermore, by withdrawing all its requests by letter dated 12 June 2024, the patent proprietor also withdrew its auxiliary request for oral proceedings within one month of notification of the board's communication under Article 15(1) RPBA, i.e. within the time limit established in Rule 103(4)(c) EPC. Thus, the patent proprietor's appeal fee is reimbursed at 25%.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The patent proprietor's appeal fee is reimbursed at 25%.

The Registrar:

The Chairman:



N. Schneider

P. Lanz

Decision electronically authenticated