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D E C I S I O N
of 4 January 2001

Case Number: T 0836/97 - 3.2.2

Application Number: 89303127.8

Publication Number: 0339799

IPC: A61M 25/00

Language of the proceedings: EN

Title of invention:

Variable shaped catheter system and method for catheterization

Patentee:

Medtronic AVE, Inc.

Opponent:

Biotronik Mess- und Therapiegeräte GmbH & Co Ingenieurbüro
Berlin

Headword:

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Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Patentee's agreement with the revocation of the patent"

Decisions cited:

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Catchword:

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Case Number: T 0836/97 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 4 January 2001

Appellant: Biotronik Mess- und Therapiegeräte GmbH &
(Opponent) Co Ingenieurbüro Berlin
Woermannkehre 1
D-12359 Berlin (DE)

Representative: Christiansen, Henning, Dipl.-Ing.
Patentanwalt
Pacelliallee 43/45
D-14195 Berlin (DE)

Respondent: Medtronic AVE, Inc.
(Proprietor of the patent) 3576 Unocal Place
Santa Rosa
California 95403 (US)

Representative: Bauer, Friedrich, Dipl.-Ing.
Andrae Flach Haug
Prinzregentenstrasse 24
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 30 May 1997
concerning maintenance of European patent
No. 0 330 799 in amended form.

Composition of the Board:

Chairman: W. D Weiß
Members: D. Valle
J. C. M. De Preter

Summary of Facts and Submissions

- I. In an interlocutory decision dated 30 May 1997, the Opposition Division decided to maintain the patent 0 339 799 in amended form.
- II. The Opponent appealed against this decision by letter filed on 30 July 1997, paid the fee for appeal on the same date and filed a statement of grounds of appeal on 1 September 1997, in which he requested that the patent be revoked.
- III. In a letter dated 2 November 2000 the Respondent stated:

"The patentee has decided not to maintain the above European patent. Therefore, the patentee agrees to the revocation of this patent."

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. From the statement referred to above under point III it follows that the patentee no longer approves the text in which the patent was maintained and will not submit any amended text, so that the patent has to be revoked.

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:

V. Commare

W. D. Weiß