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D E C I S I O N
of 27 May 2005

Case Number: T 0612/01 - 3.3.2

Application Number: 90308828.4

Publication Number: 0413528

IPC: A61K 7/48

Language of the proceedings: EN

Title of invention:

Amphoteric compositions and polymeric forms of alpha hydroxyacids, and their therapeutic use

Patentee:

Yu, Ruey J., Dr., et al.

Opponent:

Beiersdorf Aktiengesellschaft

Headword:

Amphoteric compositions/YU, RUEY, J., DR.

Relevant legal provisions:

EPC Art. 111(1)

Keyword:

"Revocation of the patent as a consequence of the patentee's request for revocation"

Decisions cited:

T 0186/84

Catchword:

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Case Number: T 0612/01 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 27 May 2005

Appellant: Beiersdorf Aktiengesellschaft
(Opponent) Unnastraße 48
D-20245 Hamburg (DE)

Representative: UEXKÜLL & STOLBERG
Patentanwälte
Beselerstraße 4
D-22607 Hamburg (DE)

Respondent: Yu, Ruey J., Dr.
(Proprietor of the patent) 4 Lindenwold Avenue
Abler
Pennsylvania 19002 (US)

Representative: Goldbach, Klara, Dr.
Grünecker, Kinkeldey, Stockmair &
Schwanhäusser
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
30 April 2001 concerning maintenance of
European patent No. 0413528 in amended form.

Composition of the Board:

Chairman: U. Oswald
Members: M. Ortega-Plaza
P. Mühlens

Summary of Facts and Submissions

- I. In an interlocutory decision posted on 30 April 2001, the opposition division maintained the European patent EP-0 413 528, based on application No. 90 308 828.4 in amended form based on the IX auxiliary request.
- II. The appellant (opponent) appealed against this decision and filed grounds of appeal.
- III. During the appeal procedure the respondent (patentee) filed several amended set of claims in response to communications of the board.

However, the respondent filed with its letter of 20 May 2005 the following request: "It is herewith requested to revoke European Patent No. 413 528. Further, our request for Oral Proceedings is withdrawn."

- IV. The appellant requested that the patent be revoked.

Reasons for the decision

1. The appeal is admissible.
2. The respondent's (patentee) request for revocation of the patent is considered as meaning that the respondent does no longer approve any text in which the patent could be maintained. Hence the inevitable consequence of such a statement is that the patent must be revoked (cf. decision T 0186/84, OJ 1986, 79).

3. The board can, therefore, in the exercise of its power under Article 111(1) EPC decide to revoke the patent.

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:

A. Townend

U. Oswald