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**Datasheet for the decision
of 10 June 2009**

Case Number: T 1655/07 - 3.3.04

Application Number: 02727002.4

Publication Number: 1357937

IPC: A61K 38/48

Language of the proceedings: EN

Title of invention:

Use of botuline toxin to obtain a product to be used in articular pathologies, particularly coxarthrosis, epicondylitis and rotator muscle cap pathology

Patentee:

IPSEN PHARMA

Opponent:

ALLERGAN, INC.

Headword:

Botuline toxin/IPSEN

Relevant legal provisions:

EPC Art. 111(1)

Relevant legal provisions (EPC 1973):

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Keyword:

"Revocation of European patent in consequence of patentee's withdrawal of his approval to the text of the patent"

Decisions cited:

T 0073/84, T 0452/95

Catchword:

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Case Number: T 1655/07 - 3.3.04

DECISION
of the Technical Board of Appeal 3.3.04
of 10 June 2009

Appellant:
(Opponent)

ALLERGAN, INC.
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Representative:

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Respondent:
(Patent Proprietor)

IPSEN PHARMA
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Representative:

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Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
23 July 2007 concerning maintenance of European
patent No. 1357937 in amended form.

Composition of the Board:

Chairman: U. Kinkeldey
Members: M. Wieser
F. Blumer

Summary of Facts and Submissions

- I. In a decision posted on 23 July 2007 the Opposition Division decided that the European patent No. 1 357 937 may be maintained in amended form according to Article 102(3) EPC 1973.
- II. On 24 September 2007 the Opponent (Appellant) lodged an appeal against this decision and authorized the European Patent office to charge the appropriate fee from his account. The statement of the grounds for appeal was filed on 3 December 2007, wherein it was requested that the patent was revoked.
- III. In a letter dated 28 April 2009 the representative of the Patentee (Respondent) stated:

"By order and on behalf of the patentee we herewith declare that patentee no longer approves the text in which the subject patent was granted. Moreover, we advise that patentee will not be submitting an amended text of the subject patent."

Reasons for the Decision

1. The Respondent made it clear that he no longer approves the text in which the patent was granted. Since he did not submit an amended text on which further prosecution of the appeal could be based, the patent must be revoked (see decisions T 73/84, OJ EPO 1985, 241 and T 452/95 of 18 December 1997).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

Registrar:

Chair:

P. Cremona

U. Kinkeldey