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**Datasheet for the decision
of 12 June 2012**

Case Number: T 1358/08 - 3.3.02
Application Number: 97901694.6
Publication Number: 876146
IPC: A61K 31/52, A61K 31/675,
A61K 38/13, A61P 31/22
Language of the proceedings: EN

Title of invention:

Nucleoside analogs in combination therapy of herpes simplex infections

Applicant:

Novartis International Pharmaceutical Ltd.

Opponent:

GLAXO GROUP LIMITED

Headword:

-

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

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Decisions cited:

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Catchword:

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Case Number: T 1358/08 - 3.3.02

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 12 June 2012

Appellant:
(Opponent)

GLAXO GROUP LIMITED
Glaxo Wellcome House, Berkeley Avenue
Greenford, Middlesex UB6 0NN (GB)

Representative:

Breen, Anthony Paul
GlaxoSmithKline
Corporate Intellectual Property (CN9.25.1)
980 Great West Road
Brentford, Middlesex TW8 9GS (GB)

Respondent:
(Patent Proprietor)

Novartis International Pharmaceutical Ltd.
Sofia House
48 Church Street
Hamilton HM 12 (BM)

Representative:

Henkel, Breuer & Partner
Patentanwälte
Erika-Mann Straße 23
D-80636 München (DE)

Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
6 May 2008 concerning maintenance of the
European patent No. 876146 in amended form.

Composition of the Board:

Chairman: M. C. Ortega Plaza
Members: D. Boulois
D. Prietzel-Funk

Summary of Facts and Submissions

- I. European patent No. 0 876 146, based on application number 97901694.6, filed on 24 January 1997, was granted to Novartis International Pharmaceutical Ltd.
- II. Notice of opposition was filed on 2 February 2004 by Glaxo Group Ltd.
- III. By its decision pronounced at the oral proceedings of 29 January 2008, the opposition division maintained the patent in amended form (Article 101(3)(a) and 106(2) EPC 1973) on the basis of the second auxiliary request filed at the oral proceedings.
- IV. On 19 July 2008, the opponent filed an appeal against the first instance decision. The corresponding statement setting out the grounds of appeal was filed on 16 September 2008.
The appellant requested that the first instance decision be set aside and the patent be revoked.
- V. The patentee (respondent) filed with its response to the grounds of appeal dated 1 April 2009 three sets of claims as auxiliary requests 1 to 3.

The respondent requested that the appeal be dismissed or alternatively, requested maintenance of the patent in amended form on the basis of one of the auxiliary requests 1 to 3.

- VI. A communication accompanying the summons to the oral proceedings to be held on 14 June 2012 was sent to the

parties pursuant to Article 15(1) RPBA on 25 November 2011.

VII. With a letter dated 18 May 2012, the appellant informed the Board of Appeal that it will not attend the oral proceedings, but will rely only on the written submissions.

VIII. With a letter dated 18 May 2012, the proprietor informed the Board of Appeal that it did no longer approve the text of the patent according to any request on file, and that therefore the patent should be revoked.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine and decide upon the European patent application or the European patent only in the text submitted to it, or agreed by the applicant or the proprietor of the patent.
2. With its letter dated 18 May 2012, the proprietor of European patent n° 0 876 146 informed the present Board of Appeal that it not longer approved the text of any of its requests on file. The proprietor concluded that the patent should be revoked.
3. Under these circumstances, the decision under appeal has to be set aside and the patent 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:

N. Maslin

M. C. Ortega-Plaza