

**Internal distribution code:**

- (A) [ - ] Publication in OJ  
(B) [ - ] To Chairmen and Members  
(C) [ - ] To Chairmen  
(D) [ X ] No distribution

**Datasheet for the decision  
of 8 January 2013**

**Case Number:** T 0186/10 - 3.3.02

**Application Number:** 00993165.0

**Publication Number:** 1231915

**IPC:** A61K31/22, A61K9/00, A61P31/04

**Language of the proceedings:** EN

**Title of invention:**  
USE OF PLEUROMUTILIN DERIVATIVES FOR TRANSDERMAL TREATMENT OF  
BACTERIAL DISEASES

**Patentee:**  
Novartis AG  
Novartis Pharma GmbH

**Opponent:**  
Glaxo Group Ltd.

**Headword:**  
Use of pleuromutilin derivatives/NOVARTIS

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
Withdrawal of the agreement to the text of the patent -  
revocation of the patent

**Decisions cited:**  
T 73/84



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T0186/10 - 3.3.02

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.02**  
**of 8 January 2013**

**Appellant:**  
(Opponent)

Glaxo Group Ltd.  
GSK House, 980 Great West Road  
Brentford, Middx TW8 9GS (GB)

**Representative:**

Florence, Julia Anne  
GlaxoSmithKline  
Corporate Intellectual Property CN925.1  
980 Great West Road  
Brentford, Middlesex TW8 9GS (GB)

**Respondents:**  
(Patent Proprietors)

Novartis AG  
Lichtstrasse 35  
4056 Basel (CH)

Novartis Pharma GmbH  
Brunner Strasse 59  
1230 Wien (AT)

**Representative:**

Hiscock, Ian James  
Novartis International AG  
Lichstrasse 35,  
4056 Basel (CH)

**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted 17 December 2009  
rejecting the opposition filed against European  
patent No. 1231915 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman:** L. Bühler  
**Members:** D. Boulois  
A. Lindner

## **Summary of Facts and Submissions**

- I. The Opponent (Appellant) lodged an appeal against the decision of the Opposition Division rejecting the opposition filed against European patent No. 1 231 915.
- II. Summons to oral proceedings were despatched on 26 June 2012.
- III. With a letter filed on 17 August 2012 the Proprietors of the patent-in-suit (Respondents) informed the Board that they did not approve the text of the patent as granted and did not propose any other text.
- IV. The oral proceedings appointed for 21 September 2012 were cancelled on 5 September 2012.
- V. The Appellant requested that the decision under appeal be set aside and that the patent be revoked.

## **Reasons for the Decision**

1. The appeal is admissible.
2. In accordance with Article 113(2) EPC, the EPO can maintain a patent only on the basis of a text agreed by the proprietor of the patent.

The Respondents indicated that they did not agree to the text of the patent as granted and did not propose any other text for the maintenance of the patent-in-suit. Consequently, the Board has no basis on which to make a decision on patentability as would be required by Article 113(2) EPC.

3. Under such circumstances where a fundamental requirement for maintaining the patent is lacking, the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see inter alia decision T 73/84 OJ EPO 1985, 241).

## 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

L. Bühler

Decision electronically authenticated