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**Datasheet for the decision
of 22 September 2016**

Case Number: T 2528/10 - 3.3.02

Application Number: 00951767.3

Publication Number: 1214129

IPC: B01D9/00, B01F5/02, A61K9/00

Language of the proceedings: EN

Title of invention:
PROCESS FOR PRODUCING FINE MEDICINAL SUBSTANCES

Patent Proprietor:
Aventis Pharma Limited

Opponent:
Bayer Technology Services GmbH

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Revocation of the patent at request of the patent proprietor

Decisions cited:

T 0073/84, T 0186/84

Catchword:



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Case Number: T 2528/10 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 22 September 2016

Appellant: Bayer Technology Services GmbH
(Opponent) 51368 Leverkusen (DE)

Representative: BIP Patents
c/o Bayer Intellectual Property GmbH
Alfred-Nobel-Straße 10
40789 Monheim am Rhein (DE)

Respondent: Aventis Pharma Limited
(Patent Proprietor) Aventis House,
50 Kings Hill Avenue,
Kings Hill
West Malling,
Kent ME19 4AH (GB)

Representative: Adamson Jones
BioCity Nottingham
Pennyfoot Street
Nottingham NG1 1GF (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
10 November 2010 concerning maintenance of the
European Patent No. 1214129 in amended form.

Composition of the Board:

Chairman U. Oswald
Members: K. Giebeler
L. Bühler

Summary of Facts and Submissions

- I. In its interlocutory decision posted on 10 November 2010, the opposition division decided that European patent No. 1 214 129 as amended met the requirements of the EPC.
- II. The opponent (appellant) appealed against this decision and requested that the patent be revoked in its entirety.
- III. The proprietor (respondent) originally requested that the appeal be dismissed, but by letter of 8 August 2016 stated the following:

"(...) we hereby withdraw the Patent Proprietor's (Respondent's) approval of the text on the basis of which the Opposition Division decided to maintain the above European patent.

The Patent Proprietor does not propose any alternative text. We understand that this will lead to the revocation of the European patent."

Reasons for the Decision

1. The appeal is admissible.
2. Article 113(2) EPC stipulates that the EPO may decide upon a European patent only in the text submitted to it, or agreed to by the proprietor of the patent.
3. This substantive requirement for maintaining a patent is not fulfilled if the proprietor - as in the present case - expressly states that it withdraws its approval

of the text of the amended patent held allowable by the opposition division and that it does not propose any alternative text (see section III above).

4. There is thus no text of the patent on the basis of which the board can consider the appeal. In these circumstances, the appeal proceedings are to be terminated by a decision ordering the revocation of the patent, without going into the substantive issues (see e.g. decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79).

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

U. Oswald

Decision electronically authenticated