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**Datasheet for the decision
of 24 March 2014**

Case Number: T 0676/11 - 3.3.01

Application Number: 06013133.1

Publication Number: 1873151

IPC: C07D403/12

Language of the proceedings: EN

Title of invention:

Improved process for producing moxonidine

Patent Proprietor:

CHEMAGIS LTD.

Opponent:

Midas Pharma GmbH

Headword:

Moxonidine production/CHEMAGIS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

No text agreed by the patentee - revocation of patent



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Boards of Appeal
Chambres de recours

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Case Number: T 0676/11 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 24 March 2014

Appellant:
(Patent Proprietor)

CHEMAGIS LTD.
29 Lehi Street,
51200 Bnei-Brak (IL)

Representative:

August & Debouzy avocats
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75008 Paris (FR)

Appellant:
(Opponent)

Midas Pharma GmbH
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55218 Ingelheim (DE)

Representative:

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ZSP Patentanwälte
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81373 München (DE)

Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 January 2011 concerning maintenance of the
European Patent No. 1873151 in amended form.**

Composition of the Board:

Chairman: A. Lindner
Members: L. Seymour
D. S. Rogers

Summary of Facts and Submissions

- I. The patent proprietor (appellant patentee) and the opponent (appellant opponent) each lodged an appeal against the interlocutory decision of the opposition division maintaining European patent No. 1 873 151 in amended form, on the basis of auxiliary request 1 filed at oral proceedings before the opposition division.
- II. Summons to oral proceedings were issued by the board on 20 December 2013.
- III. With letter dated 28 February 2014, the appellant patentee stated the following:

"... further to the summons to attend oral proceedings on May 22nd, 2014 issued by the Board, please note that the Patentee no longer approves the text on the basis of which the European patent EP 1 873 151 was granted and withdraws all its requests.

In line with the Guidelines D-VI-2.2 and D-VIII-1.2.5, it is thus requested that the patent be revoked."

- IV. The appellant opponent requested in writing that the decision under appeal be set aside and that the patent be revoked. It also requested oral proceedings in the event that the board did not accede to this request.
- V. The parties were informed by a communication of 13 March 2014 that the oral proceedings had been cancelled.

Reasons for the Decision

1. The appeals are admissible.
2. Article 113(2) EPC stipulates that the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent.

In the present case, as indicated in above point III, the appellant patentee expressly stated that it no longer approved the text of the patent as granted, withdrew all its previous requests, and requested revocation of the patent.

There is therefore no text of the patent on the basis of which the board can consider the appeal. It is established case law that, under these circumstances, the patent must be revoked without further substantive examination (see Case Law of the Boards of Appeal of the EPO, 7th edition 2013, IV.C.5.2).

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:



M. Schalow

A. Lindner

Decision electronically authenticated