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**Datasheet for the decision
of 22 September 2015**

Case Number: T 0728/11 - 3.3.02

Application Number: 05015603.3

Publication Number: 1602370

IPC: A61K31/165, A61P9/00

Language of the proceedings: EN

Title of invention:

Synergistic combinations comprising a renin inhibitor for cardiovascular diseases

Patent Proprietors:

Novartis AG
Novartis Pharma GmbH

Opponents:

TEVA PHARMACEUTICALS INDUSTRIES LTD.
ratiopharm GmbH

Headword:

Combination aliskiren and diuretic/NOVARTIS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Withdrawal of approved text on which patent was granted -
patent revoked/termination of appeal proceedings

Decisions cited:

T 0073/84

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0728/11 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 22 September 2015

Appellant:
(Patent proprietors)

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4056 Basel (CH)

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Representative:

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Respondent 1:
(Opponent 1)

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Representative:

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Respondent 2:
(Opponent 2)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 25 January 2011
revoking European patent No. 1602370 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman U. Oswald
Members: M. C. Ortega Plaza
 L. Bühler

Summary of Facts and Submissions

- I. This appeal lies from the decision of the opposition division revoking European patent No. 1602370.
- II. The patent proprietors (appellant) filed an appeal against said decision and grounds thereto. With its grounds of appeal the appellant requested that the decision under appeal be set aside and the patent be maintained as granted, or, in the alternative, the patent be maintained in amended form on the basis of one of the auxiliary requests filed with the grounds of appeal.
- III. Respondent-Opponent 2 with its reply to the statement of grounds of appeal requested that the appeal be dismissed and the patent be revoked in its entirety.
- IV. Respondent-Opponent 1 did not file a response to the grounds of appeal.
- V. A board's communication pursuant to Article 15(1) RPBA was sent to the parties on 22 April 2015 together with the summons to oral proceedings to be held on 22 September 2015. With its communication the board gave a detailed negative opinion *inter alia* in relation to Article 100(b) EPC, and Article 100(a), together with Article 56 EPC.
- VI. With a letter dated 12 August 2015 the appellant informed the board that it withdrew all auxiliary requests on file, that it no longer approved the text in which the patent in suit was granted and that it did not intend to submit an amended text in the present proceedings.

Further, the appellant expressed its understanding that this obviated the need for oral proceedings and that the patent was revoked.

VII. Oral proceedings appointed for 22 September 2015 were thereupon cancelled.

Reasons for the Decision

1. The appeal is admissible.
2. 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.
3. As the patent proprietor withdrew all of its auxiliary requests and no longer approves the text in which the patent was granted, it has to be inferred that it wishes to prevent any text whatever of the patent from being maintained (see T 73/84, OJ EPO 1985, 241). In a situation where the patent proprietor has appealed a decision of the opposition division revoking its patent, it follows from such withdrawal of the agreement to any text for the maintenance of the patent that the appeal is devoid of subject-matter for substantive examination. Consequently, the appeal proceedings are to be terminated, and the decision under appeal becomes final.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



N. Maslin

U. Oswald

Decision electronically authenticated