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**Datasheet for the decision
of 7 October 2015**

Case Number: T 1121/11 - 3.3.02

Application Number: 99934647.1

Publication Number: 1096932

IPC: A61K31/41, A61K31/44,
A61K31/275, A61P3/00

Language of the proceedings: EN

Title of invention:

ANTIHYPERTENSIVE COMBINATION OF VALSARTAN AND CALCIUM CHANNEL
BLOCKER

Patent Proprietor:

Novartis Pharma AG
Novartis Pharma GmbH

Opponents:

Synthon B.V.
Generics [UK] Limited
Mundipharma GmbH
Teva Pharmaceutical Industries Ltd.
Appelt, Christian W.
ratiopharm GmbH
Beckmann, Claus
Ranbaxy Laboratories Limited

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision -

text or agreement to text withdrawn by patent proprietor -
patent revoked

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1121/11 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 7 October 2015

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Appellant: Novartis Pharma GmbH
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Decision under appeal:
**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 April 2011 concerning maintenance of the
European Patent No. 1096932 in amended form.**

Composition of the Board:

Chairman	U. Oswald
Members:	T. Sommerfeld
	L. Bühler

Summary of Facts and Submissions

- I. Appeals were lodged by opponents 01, 02, 06 and 07 as well as by the patent proprietors against the decision of the opposition division announced at the oral proceedings on 27 January 2011 concerning maintenance of European Patent No. 1096932 in amended form.
- II. With the respective statements of the grounds of appeal, the appellant-opponents requested that the decision be set aside and the patent be revoked in its entirety, while the appellant-patentees requested that the decision be set aside and that the patent be maintained on basis of the main request which had been rejected by the opposition division (filed with letter of 26 November 2010).
- III. With the reply to the grounds of appeal of the appellant-opponents, the appellant-patentees submitted new claim requests: main request (identical to the main request of 26 November 2010) and auxiliary requests I (identical to the claims as maintained by the opposition division), II, III and IV.
- IV. Summons to oral proceedings before the board were issued on 21 August 2015, scheduling oral proceedings for 20, 21 and 22 January 2015.
- V. With letter of 24 September 2015, the appellant-patentees filed the following declaration:

"The patentees hereby withdraw (1) all requests on file and (2) their approvals of the text upon which the above patent was granted. The patentees will not be filing any replacement text. It is understood that this will lead to the patent being revoked. The oral

proceedings scheduled for 20th January are therefore procedurally redundant and the patentees will not be attending."

VI. The oral proceedings were thereafter cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC the European Patent Office must consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle is part of the common provisions governing procedure and is therefore to be strictly observed also in opposition and opposition appeal proceedings.
2. In the present case the appellant-patentees withdrew during the appeal proceedings all requests submitted as well as their approval of the text of the patent as granted, with the consequence that there is no text of the patent on the basis of which the Board can consider the case. With the same letter the appellant-patentees envisaged revocation of the patent as the consequence of this withdrawal.
3. While the procedure for revocation pursuant to Articles 105a to 105c EPC is not available during opposition and opposition appeal proceedings, it is the consistent jurisprudence of the boards of appeal that, if the patent proprietor states that he no longer approves the text in which the patent was granted and does not submit, or withdraws, any amended text, the patent, as a consequence of Article 113(2) EPC, is to be revoked without substantive examination as to patentability,

which becomes impossible in the absence of a valid text.

4. The Board has no reason in the present case to deviate from the consistent approach of the boards of appeal, with the consequence that the patent is to 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

U. Oswald

Decision electronically authenticated