

Internal distribution code:

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

**Datasheet for the decision
of 11 August 2015**

Case Number: T 1868/11 - 3.3.01

Application Number: 01271850.8

Publication Number: 1350511

IPC: A61K31/4365, A61K31/60

Language of the proceedings: EN

Title of invention:
MEDICINAL COMPOSITIONS CONTAINING ASPIRIN

Patent Proprietor:
Daiichi Sankyo Company, Limited
Ube Industries, Ltd.

Opponents:
Helm AG
ratiopharm GmbH

Headword:
Prasugrel and aspirin/DAIICHI SANKYO

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Withdrawal of all pending requests -
termination of appeal proceedings

Decisions cited:
T 1244/08, T 2054/08

Catchword:



**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: T 1868/11 - 3.3.01

**D E C I S I O N
of Technical Board of Appeal 3.3.01
of 11 August 2015**

Appellants: Daiichi Sankyo Company, Limited
(Patent Proprietor 1) 3-5-1 Nihonbashi-honcho
Chuo-ku
Tokyo
103-8426 (JP)

(Patent Proprietor 2) Ube Industries, Ltd.
1978-96, O-Aza Kogushi
Ube-shi,
Yamaguchi-ken 755-8633 (JP)

Representative: Bizley, Richard Edward
Avidity IP
Broers Building
Hauser Forum
21 J J Thomson Ave
Cambridge CB3 0FA (GB)

Respondent I: Helm AG
(Opponent 1) Nordkanalstrasse 28
20097 Hamburg (DE)

Respondent II: ratiopharm GmbH
(Opponent 3) 89079 Ulm (DE)

Representative: Best, Michael
Lederer & Keller
Patentanwälte Partnerschaft mbB
Unsöldstrasse 2
80538 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 17 June 2011
revoking European patent No. 1350511 pursuant to
Article 101(3) (b) EPC.

Composition of the Board:

Chairman C. M. Radke
Members: G. Seufert
 L. Bühler

Summary of Facts and Submissions

- I. This appeal lies from the decision of the opposition division revoking European patent No. 1 350 511.
- II. The patent proprietors (appellants) lodged an appeal against this decision. In their statement setting out the grounds of appeal, the appellants requested that the decision of the opposition division be set aside and that the patent be maintained on the basis of the main request or on the basis of one of the first to sixth auxiliary requests filed therewith.
- III. Opponent 1 (respondent I) and opponent 3 (respondent II) both filed responses to the statement of grounds of appeal and requested that the appeal be dismissed.
- IV. The board issued a summons to oral proceedings dated 18 May 2015 accompanied by a communication pursuant to Article 15(1) Rules of Procedure of the Boards of Appeal (RPBA).
- V. With its letter of 19 May 2015 the appellants filed new third and fourth auxiliary requests and renumbered the previously filed third to sixth auxiliary requests as fifth to eighth auxiliary requests, respectively.
- VI. Oral proceedings took place on 11 August 2015. The appellants and respondent II were represented. Respondent I had informed the board that it would not attend. At the commencement of the oral proceedings the appellants and respondent I confirmed their requests on file.

VII. After the board had given the parties its view on the pending requests, the appellants declared that they withdrew all their pending requests.

Reasons for the Decision

The withdrawal of all pending requests in the appeal proceedings by the appellants can only mean that they also withdrew their agreement to the text of the patent as granted and to any amendment submitted during the proceedings in view of the maintenance of the patent in amended form. According to established case law of the boards of appeal, the withdrawal by the appellant, as the proprietor of a patent that has been revoked by the opposition division, of its agreement to any text for the maintenance of the patent is to be interpreted as the withdrawal of its appeal (see e.g. decisions T 1244/08 and T 2054/08). Consequently, the appeal proceedings are immediately and automatically 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:



M. Schalow

C. M. Radke

Decision electronically authenticated