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

Case Number: T 0203/12 - 3.3.01

Application Number: 03769887.5

Publication Number: 1673370

IPC: C07D413/10

Language of the proceedings: EN

Title of invention:
CRYSTALLINE FORM OF LINEZOLID

Patent Proprietor:
Symed Labs Limited

Opponents:
HGF Limited
Agrobiogen GmbH Biotechnologie
Synthon B.V.

Headword:
Linezolid form III/SYMED

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Withdrawal of approval of text on which patent was granted -
termination of appeal proceedings

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



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0203/12 - 3.3.01

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

Appellant: Symed Labs Limited
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Respondent: Agrobiogen GmbH Biotechnologie
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 December
2011 revoking European patent No. 1673370
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman A. Lindner
Members: L. Seymour
 L. Bühler

Summary of Facts and Submissions

- I. This appeal lies from the decision of the opposition division revoking European patent No. 1 673 370. The decision was based on a main request and auxiliary requests 1 to 6, filed with letter dated 24 August 2011 as auxiliary requests 1 to 3 and 5 to 8, respectively. For all these requests, the requirements of Articles 123(2) EPC and 83 EPC were found not to have been met.
- II. The patentee (appellant) lodged an appeal against this decision. In its statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that the case be remitted to the first instance for further prosecution with respect to the issues of novelty and inventive step, on the basis of the main request (claims as granted), or alternatively on the basis of auxiliary requests 1 to 7 filed therewith.
- III. In their respective replies to the statement of grounds of appeal, the respondents (opponents 1, 2 and 4) requested that the appeal be dismissed. Oral proceedings were conditionally requested.
- IV. The board issued a summons to oral proceedings accompanied by a communication pursuant to Article 15(1) RPBA.
- V. With the letter dated 3 August 2015, the appellant stated the following:

"Patentee note that in the preliminary opinion the Board of Appeal has raised doubts about the formal admissibility of several of the requests filed with the appeal substantiation.

In view of the above, patentee declares that patentee no longer approves the text on which the patent was granted and will not be submitting an amended text. Patentee is aware that this declaration will lead to the revocation of the patent.

Accordingly, patentee herewith withdraws the request for oral proceedings in the present appeal proceedings and will not be represented during the hearing on September 3 and 4, 2015."

- VI. By letters dated 3 and 4 August 2015, respectively, respondents 1 and 2 withdrew their requests for oral proceedings.

- VII. By communication sent by fax on 10 August 2015, oral proceedings appointed for 3 and 4 September 2015 were cancelled.

Reasons for the Decision

- 1. The appeal is admissible.

- 2. According to established case law of the boards of appeal, the declaration of the appellant (see above point V, second paragraph), as the proprietor of a patent that has been revoked by the opposition division, is to be interpreted as the withdrawal of its appeal (see e.g. decisions T 1244/08 and T 2054/08). Consequently, 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

A. Lindner

Decision electronically authenticated