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Datasheet for the decision of 10 February 2015

Case Number: T 1020/12 - 3.3.04

Application Number: 05791236.2

Publication Number: 1799703

IPC: C07K1/00, C07K1/14, C07K14/00, C08G69/10

Language of the proceedings: EN

Title of invention:
Process for preparation of mixtures of polypeptides using purified hydrobromic acid

Patent Proprietor:
Teva Pharmaceutical Industries Ltd

Opponent:
Synthon BV

Headword:
Glatiramer acetate/TEVA

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision: revocation of the patent at request of the patent proprietor

Decisions cited:
T 0073/84

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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Case Number: T 1020/12 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 10 February 2015

Appellant: (Opponent)	Synthon BV Microweg 22 6503 GN Nijmegen (NL)
Representative:	Hamm, Volker Maiwald Patentanwalts GmbH Jungfernstieg 38 20354 Hamburg (DE)
Respondent: (Patent Proprietor)	Teva Pharmaceutical Industries Ltd 5 Basel Street PO Box 3190 49131 Petach Tikva (IL)
Representative:	Nachshen, Neil Jacob D Young & Co LLP 120 Holborn London EC1N 2DY (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 27 February 2012 concerning maintenance of the European Patent No. 1799703 in amended form.**

Composition of the Board:

Chairwoman	G. Alt
Members:	R. Morawetz
	M.-B. Tardo-Dino

Summary of Facts and Submissions

I. The opponent (hereinafter "appellant") has lodged an appeal against the decision of the opposition division to maintain European patent No. EP 1 799 703 in amended form. It requested that the decision under appeal be set aside and that the patent be revoked.

II. In its response to the statement of the grounds of appeal the patent proprietor (hereinafter "respondent") requested that the patent be upheld in the form maintained by the opposition division (main request) or on the basis of the first or second auxiliary request filed with its reply.

III. The board issued a summons to oral proceedings dated 10 September 2014 and sent a communication pursuant to Article 15(1) Rules of Procedure of the Boards of Appeal (RPBA) on 8 October 2014.

IV. The respondent informed the board by a letter of 3 February 2015 as follows:

"*The proprietor hereby withdraws its approval of the text of the patent as granted and as upheld by the Opposition Division including the Auxiliary Requests submitted during the Appeal proceedings. As there is no approved text, the proprietor understands that this withdrawal will have the consequences specified in Article 68 EPC, namely the cancelling of the effects of the European patent application and the resulting patent as from the outset. In accordance with the decisions in in* [sic] *T230/84, T1035/98, T655/01 and T1526/06, the proprietor considers the appeal proceedings to be terminated and it looks forward to receiving confirmation that the oral proceedings*

scheduled for 12 February 2015 have been cancelled."

V. The parties were informed by a communication of 6 February 2015 that the oral proceedings were cancelled.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. Such an agreement cannot be deemed to exist if the proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and withdraws all pending requests (see section IV, above).

3. 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 in these circumstances the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see decision T 73/84, OJ EPO, 1985, 241 and 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 Chairwoman:

P. Cremona G. Alt

Decision electronically authenticated