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**Datasheet for the decision
of 25 August 2017**

Case Number: T 0182/13 - 3.3.01
Application Number: 04791330.6
Publication Number: 1685130
IPC: C07D471/04, A61K31/437,
A61P31/04
Language of the proceedings: EN

Title of invention:

POLYMORPHS OF 1-CYCLOPROPYL-7-([S,S] - 2,8-DIAZADICYCLO
[4.3.0] NON-8-YL) -6-FLUORO-1,4-DIHYDRO-8-METHOXY-4-OXO-3-
QUINOLINE CARBOXYLIC ACID HYDROCHLORIDE AND METHODS FOR THE
PREPARATION THEREOF

Patent Proprietor:

CHEMI S.p.A.

Opponent:

Dr. Reddy's Laboratories Ltd.

Headword:

Moxifloxacin HCl polymorphs/CHEMI

Relevant legal provisions:

EPC R. 84(1), 100(1)

Keyword:

Decisions cited:

T 0708/01

Catchword:



Beschwerdekammern
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Case Number: T 0182/13 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 25 August 2017

Appellant: CHEMI S.p.A.
(Patent Proprietor) Via dei Laboratori, 54
20092 Cinisello Balsamo (Milano) (IT)

Representative: Pistolesi, Roberto
Dragotti & Associati Srl
Via Nino Bixio, 7
20129 Milano (IT)

Respondent: Dr. Reddy's Laboratories Ltd.
(Opponent) 7-1-27 Ameerpet
Hyderabad 500 016 (IN)

Representative: Bates, Alan Douglas Henry
Reddie & Grose LLP
The White Chapel Building
10 Whitechapel High Street
London E1 8QS (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
21 November 2012 concerning maintenance of the
European Patent No. 1685130 in amended form.

Composition of the Board:

Chairman A. Lindner
Members: J. Molina de Alba
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division posted on 21 November 2012 concerning maintenance of the European Patent No. 1 685 130 in amended form based on the set of claims filed as auxiliary request 2 at the oral proceedings of 12 October 2012.

- II. By communication of the board of 11 April 2017, the parties' attention was drawn to the fact that the patent had meanwhile lapsed in all designated contracting states, and the appellant was asked to inform the board within a time limit of two months whether it requested a continuation of the appeal proceedings.

- III. The appellant did not reply within the given time limit. On 25 August 2017, the registrar of the board contacted the appellant by telephone. The appellant confirmed that it had received the board's communication dated 11 April 2017.

Reasons for the Decision

1. If a European patent has lapsed in all designated contracting states, opposition proceedings may be continued at the request of the opponent (see Rule 84(1) EPC). According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition proceedings. However, if, as in the present case, the patent proprietor is the appellant, it would be inappropriate to allow the opponent (respondent) to

decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied *mutatis mutandis* in such opposition appeal proceedings so that it is the patent proprietor who can request that the appeal proceedings be continued (see e.g. decision T 708/01 of 17 March 2005, point 1).

2. The appellant (patent proprietor) did not file any requests with respect to the continuation of appeal proceedings within the prescribed time limit. This is interpreted as meaning that the appellant did not wish to request continuation. Under these circumstances, the board sees no reason to continue the appeal proceedings of its own motion. Therefore, the appeal proceedings are terminated.

Order

For these reasons it is decided that:

1. The appeal proceedings are terminated.

The Registrar:

The Chairman:



A. Wolinski

A. Lindner

Decision electronically authenticated