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Datasheet for the decision of 4 June 2019

Case Number: T 1502/14 - 3.3.02

Application Number: 03784274.7

Publication Number: 1539711

IPC: C07D239/42

Language of the proceedings: EN

Title of invention:
PROCESS FOR PREPARING THE CALCIUM SALT OF ROSUVASTATIN

Patent Proprietor:
AstraZeneca UK Limited

Opponents:
Gillard, Richard Edward
Teva Pharmaceutical Industries Ltd.

Headword:

Relevant legal provisions:
EPC Art. 113(2), 101

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

Decisions cited:
T 0073/84, T 0655/11, T 0220/12, T 0381/12, T 2680/17

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

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Case Number: T 1502/14 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 4 June 2019

Appellant: (Opponent 1)	Gillard, Richard Edward Elkington and Fife LLP Thavies Inn House 3-4 Holborn Circus London EC1N 2HA (GB)
Representative:	Elkington & Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Appellant: (Opponent 2)	Teva Pharmaceutical Industries Ltd. 5 Basel Street P.O. Box 3190 49131 Petah Tiqva (IL)
Representative:	D Young & Co LLP 120 Holborn London EC1N 2DY (GB)
Respondent: (Patent Proprietor)	AstraZeneca UK Limited 2 Kingdom Street London W2 6BD (GB)
Representative:	Potter Clarkson The Belgrave Centre Talbot Street Nottingham NG1 5GG (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 10 June 2014 rejecting the opposition filed against European patent No. 1539711 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	M. O. Müller
Members:	P. O'Sullivan
	L. Bühler

Summary of Facts and Submissions

I. By way of its decision, the opposition division found that European Patent No. 1 539 711 met the requirements of the European Patent Convention.

II. The opponents (appellants) filed appeals against this decision requesting revocation of the patent.

III. During oral proceedings before the board held on 4 June 2019, the respondent disapproved of the text of the granted patent and of all claim requests on file, stated that no amended text would be submitted, and that it expected the patent to be revoked.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be observed also in opposition and opposition appeal proceedings.

2. The respondent, by withdrawing approval of the text of the granted patent, indicating that it would not be submitting an amended text and expecting the patent to be revoked, has thereby withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text on the basis of which the Board can maintain the patent.

3. In view of the above, the Board concludes that the patent must be revoked as envisaged in Article 101 EPC and as expected by the respondent. This conclusion is also in line with established case law following decision T 73/84, OJ 1985, 241 (see e.g. T 655/11 of 11 November 2005; T 220/12 of 22 June 2015; T 381/12 of 3 January 2018; T 2680/17 of 2 April 2019).

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 M. O. Müller

Decision electronically authenticated