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**Datasheet for the decision
of 12 August 2019**

Case Number: T 1556/14 - 3.3.01

Application Number: 06735710.3

Publication Number: 1853250

IPC: A61K31/337, A61K31/555,
A61K38/22, A61K31/7068,
A61P35/00

Language of the proceedings: EN

Title of invention:

COMBINATIONS AND MODES OF ADMINISTRATION OF THERAPEUTIC AGENTS
AND COMBINATION THERAPY

Patent Proprietor:

Abraxis BioScience, LLC

Opponents:

Generics [UK] Limited
MediGene Aktiengesellschaft

Headword:

nab-Paclitaxel combinations/ABRAXIS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text and agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84, T 0186/84, T 0655/01, T 1526/06, T 1655/07,
T 0969/10, T 2405/12



Beschwerdekammern

Boards of Appeal

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Case Number: T 1556/14 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 12 August 2019

Appellant: Abraxis BioScience, LLC
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Appellant: Generics [UK] Limited
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Party as of right: MediGene Aktiengesellschaft
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 May 2014 concerning maintenance of the
European Patent No. 1853250 in amended form.**

Composition of the Board:

Chairman A. Lindner
Members: J. Molina de Alba
 P. de Heij

Summary of Facts and Submissions

- I. Two oppositions were filed against European patent No. 1 853 250.
- II. The decision under appeal is the interlocutory decision of the opposition division finding that the patent as amended in the form of auxiliary request 9 met the requirements of the EPC.
- III. Each of the two opponents and the patent proprietor lodged an appeal against that decision. Opponent 2 withdrew its appeal with a letter dated 19 February 2015.
- IV. The board issued a summons to oral proceedings to be held on 12-14 August 2019.
- V. With a letter filed in the evening of the last working day before the oral proceedings, i.e. 9 August 2019, the patent proprietor withdrew its appeal, its request for oral proceedings and all pending requests, and declared that no further requests would be filed.

In addition, the patent proprietor withdrew its approval of the text in which the patent had been granted and of the text "*as maintained by the Opposition Division in amended form*". Furthermore, the patent proprietor stated that it would not file a replacement text and requested that the patent be revoked.

- VI. Oral proceedings took place on 12 August 2019 in the absence of the opponents. Opponent 2 had announced its absence with a letter dated 21 December 2018 and

opponent 1 by phone shortly before the oral proceedings of 12 August 2019.

VII. At the end of the oral proceedings the decision of the board was announced.

Reasons for the Decision

1. The appellant patent proprietor has withdrawn its appeal.
2. In addition, by disapproving the granted text of the patent and the text of the claim set that was upheld by the opposition division, stating that a replacement text will not be filed and withdrawing all pending requests, it has withdrawn its approval of any text for maintenance of the patent.
3. Under Article 113(2) EPC, the European Patent Office shall 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 strictly observed also in opposition and opposition appeal proceedings.
4. There is therefore no valid text of the patent on the basis of which the board can consider maintaining the patent.
5. Since the text of the patent is at the disposition of the patent proprietor, the patent cannot be maintained against the patent proprietor's will.
6. In the circumstances described above, it is established case law that the appeal proceedings must be terminated

by a decision ordering revocation of the patent, since in the absence of a valid text an essential requirement for maintaining the patent is lacking (see, for instance, T 0073/84, OJ EPO 1985, 241; T 0186/84, OJ EPO 1986, 79; T 0655/01 of 11 November 2005; T 1526/06 of 11 July 2008; T 1655/07 of 10 June 2009; T 0969/10 of 26 September 2011; T 2405/12 of 11 May 2016).

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:



M. Schalow

A. Lindner

Decision electronically authenticated