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**Datasheet for the decision
of 18 January 2018**

Case Number: T 0157/15 - 3.3.07

Application Number: 10185350.5

Publication Number: 2319500

IPC: A61K9/20, A61K38/00, A61K9/00,
A61K38/28

Language of the proceedings: EN

Title of invention:
Rapid acting drug delivery compositions

Patent Proprietor:
Eli Lilly and Company

Opponent:
Bohmann, Armin K., Dr.

Headword:
Rapid acting drug delivery compositions/Eli Lilly and Company

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis for a decision on the appeal (no) - revocation of the
patent

Decisions cited:

T 0073/84, T 0186/84

Catchword:



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Case Number: T 0157/15 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 18 January 2018

Appellant: Eli Lilly and Company
(Patent Proprietor) Lilly Corporate Center
Indianapolis, IN 46285 (US)

Representative: Potter Clarkson LLP
The Belgrave Centre
Talbot Street
Nottingham NG1 5GG (GB)

Appellant: Bohmann, Armin K., Dr.
(Opponent) Nymphenburger Str. 1
80335 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 November 2014 concerning maintenance of the
European Patent No. 2319500 in amended form.

Composition of the Board:

Chairman J. Riolo
Members: D. Boulois
P. Schmitz

Summary of Facts and Submissions

- I. Appeal was lodged by the opponent (appellant-opponent) and the patent proprietor (appellant-proprietor) against the decision of the opposition division concerning maintenance of European patent No. 2 319 500 in amended form.
- II. The board issued summons for oral proceedings, which were scheduled for 18 January 2018.
- III. During the oral proceedings before the Board, the appellant-proprietor declared that he no longer approved the text of the patent. Reference is made to the minutes of the oral proceedings for further details.

Reasons for the Decision

1. According to Article 113(2) EPC, the European Patent Office may decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. Agreement cannot be held to be given if the patent proprietor expressly states that he no longer approves the text of the patent as granted or as amended by way of any of the claim requests on file.
2. In the present case, the patent proprietor withdrew his approval of the text of the patent as granted and as maintained by the opposition division during the oral proceedings before the Board. 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 of the patent, without going into the substantive issues (see, *inter alia*, decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79, followed by numerous decisions cited in Case Law of the Boards of Appeal of the EPO, 8th edition, 2016, IV.C.5.2, page 979).

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:



S. Fabiani

J. Riolo

Decision electronically authenticated