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**Datasheet for the decision  
of 25 July 2016**

**Case Number:** T 0454/15 - 3.3.04

**Application Number:** 06027055.0

**Publication Number:** 1769804

**IPC:** A61K38/29, A61P19/08,  
A61K33/06, A61K31/59

**Language of the proceedings:** EN

**Title of invention:**

hPTH(1-34) for use in preventing or reducing the incidence or severity of vertebral and / or non vertebral fracture in a male human

**Patent Proprietor:**

Eli Lilly and Company

**Opponents:**

Zentiva k.s.  
STADA Arzneimittel AG  
Teva Pharmaceutical Industries Ltd.

**Headword:**

hPTH(1-34) therapy/ELI LILLY

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Withdrawal of approval of text on which patent was granted -  
appeal dismissed

**Decisions cited:**

T 0163/99, T 1637/06, T 2524/12, T 2405/12, T 0784/14

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0454/15 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 25 July 2016**

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

**Representative:** Marshall, Cameron John  
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**Respondent I:** Zentiva k.s.  
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**Representative:** Gallagher, Kirk  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 2 February 2015  
revoking European patent No. 1769804 pursuant to  
Articles 101(2) and 101(3) (b) EPC.**

**Composition of the Board:**

**Chairwoman** G. Alt  
**Members:** B. Claes  
M. Blasi

## Summary of Facts and Submissions

- I. An appeal was lodged by the patent proprietor (hereinafter "appellant") against the decision of the opposition division to revoke the European patent No. 1 769 804 on the ground for opposition under Article 100(c) EPC. The main request (patent as granted) and the auxiliary requests were considered not to meet the requirements of Articles 123(2) and 76(1) EPC.
- II. With the statement of grounds of appeal the appellant requested that the decision under appeal be set aside and that the case be remitted to the opposition division for further prosecution. In their replies to the appeal, the opponents (respondents I to III) requested to dismiss the appeal.
- III. The board issued a summons to oral proceedings accompanied by a communication pursuant to Article 15(1) RPBA conveying its preliminary opinion.
- IV. In a letter dated 5 July 2016, the appellant has stated the following:

*"The appellant no longer approves the text of the patent as granted and will not be proposing an amended text. In line with T2405/12, the appellant understands that the consequence of this action is that the patent will be revoked immediately, and that the European patent shall be deemed not to have had effect from the outset. The oral proceedings scheduled for 19th July can therefore be cancelled."*
- V. Subsequently, the oral proceedings were cancelled.

## Reasons for the Decision

1. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
2. The appellant no longer approves the text in which the patent was granted and has, by stating that it "*will not be proposing an amended text*", withdrawn any pending claim request.
3. Therefore, there is no longer any text of the patent in the proceedings on the basis of which the board could consider the appeal. In such a situation, where a fundamental requirement for allowing the appeal of the patent proprietor against a decision of the opposition division to revoke the patent is lacking, the proceedings should, in this board's view, be terminated by a decision ordering the dismissal of the appeal, without going into the substantive issues (see also, for example, decisions T 163/99 of 9 April 2002, T 1637/06 of 6 October 2009, T 784/14 of 21 July 2015 and T 2524/12 of 11 July 2016).
4. The appellant indicated that it expected an immediate revocation of the patent by referring to decision T 2405/12 of 11 May 2016.
5. The board notes in this context that the procedural circumstances in case T 2405/12, *supra*, differ from the present ones. In the case referred to the opposition division had decided that, taking into consideration the amendments made by the patent proprietor, the

patent and the invention to which it related met the requirements of the EPC. Accordingly, the board's order in reaction to the patent proprietor's withdrawal of the approval of any text for maintenance of the patent was the setting aside of the decision under appeal and the revocation of the patent.

6. In the present case, the patent had already been revoked by the opposition division and thus cannot be revoked again. Therefore, the board's order in the present case cannot be the same as that in case T 2405/12, *supra*. However, in the procedural circumstances of the present case the order to dismiss the appeal ultimately has the same outcome as in case T 2405/12, *supra*, namely that by this order the decision to revoke the patent becomes final, *i.e.* the patent is revoked.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairwoman:



P. Cremona

G. Alt

Decision electronically authenticated