

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 28 August 2019**

Case Number: T 0225/16 - 3.3.04

Application Number: 02758573.6

Publication Number: 1427437

IPC: A61K38/26, A61P3/04

Language of the proceedings: EN

Title of invention:

Oxyntomodulin for preventing or treating excess weight

Patent Proprietor:

Imperial Innovations Limited

Opponent:

Eli Lilly and Company

Headword:

Oxyntomodulin/IMPERIAL

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - agreement to text withdrawn by patent proprietor

Decisions cited:

Catchword:

-



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0225/16 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 28 August 2019

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

Representative: O'Connor, David
Eli Lilly and Company Limited
Lilly Research Centre
Erl Wood Manor
Sunninghill Road
Windlesham, Surrey GU20 6PH (GB)

Respondent: Imperial Innovations Limited
(Patent Proprietor) 52 Prince's Gate
Exhibition Road
London SW7 2PG (GB)

Representative: Abel & Imray
Westpoint Building
James Street West
Bath BA1 2DA (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on
11 December 2015 rejecting the opposition filed
against European patent No. 1427437 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chairman B. Claes
Members: D. Luis Alves
 M. Blasi

Summary of Facts and Submissions

- I. The opponent (appellant) filed an appeal against the decision of the opposition division to reject the opposition filed against European patent No. 1 427 437.
- II. With the statement of grounds of appeal the appellant requested that the decision be set aside and the patent be revoked. Oral proceedings were requested on an auxiliary basis.
- III. The proprietor (respondent) did not submit a reply to the statement of grounds of appeal.
- IV. The board appointed oral proceedings to take place on 24 May 2019 and subsequently issued a communication pursuant to Article 15(1) RPBA, setting out its preliminary opinion.
- V. By letter dated 26 April 2019 the appellant maintained its requests as stated in the statement of grounds of appeal.
- VI. In a letter dated 30 April 2019 the respondent stated that it withdrew the previous approval of the text proposed for grant and of the patent as granted. It further stated that no alternative text was being offered and that it was understood that this would result in the patent being revoked.
- VII. The oral proceedings were subsequently cancelled.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO 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. Such an agreement cannot be deemed to exist if the proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and no alternative text is offered.
3. There is therefore no text of the patent on the basis of which the board can consider compliance thereof with the requirements of the EPC. It is established case law of the boards of appeal of the EPO that in these circumstances the patent must be revoked without further substantive examination (see Case Law of the Boards of Appeal of the EPO, 8th Edition, 2016, IV.C. 5.2).
4. There are no remaining issues that have to be dealt with by the board in the present appeal case.
5. The decision can be taken without holding oral proceedings since the appellant's request to revoke the patent is allowed.

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. Lichtenvort

B. Claes

Decision electronically authenticated