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**Datasheet for the decision  
of 6 June 2019**

**Case Number:** T 0245/16 - 3.3.07

**Application Number:** 08726714.2

**Publication Number:** 2136795

**IPC:** A61K9/70

**Language of the proceedings:** EN

**Title of invention:**

AMORPHOUS DRUG TRANSDERMAL SYSTEMS, MANUFACTURING METHODS, AND  
STABILIZATION

**Patent Proprietor:**

MYLAN TECHNOLOGIES, INC.

**Opponents:**

LTS Lohmann Therapie System GmbH  
Dr. Thorsten Bausch

**Headword:**

AMORPHOUS DRUG TRANSDERMAL SYSTEMS, MANUFACTURING METHODS, AND  
STABILIZATION/MYLAN TECHNOLOGIES, INC.

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

No text agreed by patent proprietor - revocation of the patent

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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European Patent Office  
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Case Number: T 0245/16 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 6 June 2019**

**Appellant:** LTS Lohmann Therapie System GmbH  
(Opponent 1) Lohmannstr. 2  
56626 Andernach (DE)

**Representative:** Schweitzer, Klaus  
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**Respondent:** MYLAN TECHNOLOGIES, INC.  
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**Representative:** Elkington & Fife LLP  
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**Party as of right:** Dr. Thorsten Bausch  
(Opponent 2) Hoffmann Eitle  
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**Representative:** Hoffmann Eitle  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 25 November  
2015 rejecting the opposition filed against  
European patent No. 2136795 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman**            J. Riolo

**Members:**            D. Boulois  
                              C. Schmidt

## **Summary of Facts and Submissions**

- I. European patent No. 2 136 795 was granted on the basis of a set of 3 claims.
- II. Two oppositions were filed against the granted patent under Article 100 (a), (b), (c) EPC on the grounds that its subject-matter lacked inventive step, was not sufficiently disclosed and extended beyond the content of the application as filed.
- III. The present appeal lies from the decision of the opposition division to reject the oppositions (Article 101(2) EPC).
- IV. Opponent 01 (hereinafter the appellant) filed an appeal against said decision.
- V. In its reply to the statement of grounds of appeal dated 16 August 2016, the patent proprietor (hereinafter the respondent) filed 9 auxiliary requests.
- VI. The board summoned the parties to oral proceedings. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the parties were informed of the board's provisional, non-binding opinion on the issues of the case. The Board stated in particular that the claimed invention was not sufficiently disclosed, and that the requirements of Article 100(b) EPC were not met.
- VII. With a letter dated 10 May 2019, the respondent withdrew its approval of the text in which the patent was granted. The respondent further indicated that it

withdrew all requests filed with the reply to the appeal, including the request for oral proceedings.

VIII. Oral proceedings scheduled for 6 June 2019 were cancelled by the Board.

### **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, 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 of the patent, on the basis of which the Board can maintain the patent.
3. Thus, a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see "Case Law of the Boards of Appeal of the European Patent Office", 8th edition 2016, IV.C.5.2, 979, and decisions cited therein).

### **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:



B. Atienza Vivancos

J. Riolo

Decision electronically authenticated