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**Datasheet for the decision
of 8 February 2017**

Case Number: T 0599/16 - 3.3.04

Application Number: 10810282.3

Publication Number: 2405749

IPC: A61K38/02, A61K38/16, A61P25/28

Language of the proceedings: EN

Title of invention:
Low frequency glatiramer acetate therapy

Patent Proprietor:
Yeda Research and Development Co., Ltd.

Opponents:
Actavis Group PTC ehf (opposition withdrawn)
Synthon BV
Generics [UK] Limited

Headword:
Glatiramer acetate/YEDA

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Basis of decision - patent proprietor no longer approves of the text of the patent

Decisions cited:

T 0073/84

Catchword:



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Case Number: T 0599/16 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 8 February 2017

Appellant II:

(Opponent 2)

Synthon BV
Microweg 22
6503 GN Nijmegen (NL)

Representative:

Hamm & Wittkopp Patentanwälte PartmbB
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Appellant III:

(Opponent 3)

Generics [UK] Limited
(trading as Mylan)
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Representative:

Gill Jennings & Every LLP
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Respondent:

(Patent Proprietor)

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Representative:

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 January 2016
rejecting the opposition filed against European
patent No. 2405749 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Montrone
Members: R. Morawetz
 M. Blasi

Summary of Facts and Submissions

- I. Appeals were lodged by opponent 01 (hereinafter appellant I), opponent 02 (hereinafter appellant II) and opponent 03 (hereinafter appellant III) against the decision of the opposition division rejecting the opposition filed against European patent No. 2405749 pursuant to Article 101(2) EPC.
- II. Appellant I subsequently withdrew its opposition against the patent in suit.
- III. In its letter dated 10 October 2016, filed in response to the appellants' statements of grounds of appeal, the patent proprietor (hereinafter respondent) stated "*It is the Respondent's request that the Appeals are dismissed and OD decision rejecting the oppositions is upheld. Two auxiliary requests have been submitted for consideration if any deficiencies are found in respect of the granted claims. Oral proceedings are requested.*"
- IV. The board issued a summons to oral proceedings accompanied by a communication of the board.
- V. The respondent informed the board by a letter of 2 February 2017 as follows "*The proprietor hereby withdraws its approval of the text of the patent as granted. As there is no approved text, the proprietor understands that this withdrawal will have the consequences specified in Article 68 EPC. In accordance with the decisions in T230/84, T1035/98, T655/01 and T1526/06, the proprietor considers the appeal proceedings to be terminated and it looks forward to receiving confirmation that the oral proceedings scheduled for 14-15 November 2017 have been cancelled.*"

- VI. With its letter dated 3 February 2017 the respondent confirmed the withdrawal of its auxiliary requests filed on 10 October 2016.
- VII. Appellants II and III had requested in writing that the decision under appeal be set aside and that the patent be revoked. As an auxiliary measure, appellants II and III had requested oral proceedings.
- VIII. The parties were informed by a communication dated 7 February 2017 that the oral proceedings had been cancelled.

Reasons for the Decision

Procedural issues

1. In view of its withdrawal of the opposition, appellant I ceased to be a party to the appeal proceedings as regards substantive issues. Other issues for which appellant I would have remained a party did not arise in the present case.

Disapproval of the text of the patent by the patent proprietor

2. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. Such an agreement does not exist if the proprietor - as in the present case - expressly states that it no longer approves the text as granted and withdraws all pending auxiliary requests (see sections V and VI).

4. 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 patent must be revoked without further substantive examination (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition 2016, section IV.C.5.2).

Cancellation of the oral proceedings

5. The statement contained in the letter of the respondent (see section V) can only be interpreted as a withdrawal of its earlier request for oral proceedings. The summons to oral proceedings could be cancelled and the present decision could be taken without holding oral proceedings because the decision is in line with appellant's II and appellant's III main request.

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:



P. Cremona

M. Montrone

Decision electronically authenticated