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**Datasheet for the decision
of 14 October 2021**

Case Number: T 0256/18 - 3.3.04

Application Number: 12712106.9

Publication Number: 2691109

IPC: A61K38/26, A61K31/64, A61P3/08

Language of the proceedings: EN

Title of invention:
Prevention of hypoglycaemia in diabetes mellitus type 2 patients

Patent Proprietor:
Sanofi-Aventis Deutschland GmbH

Opponent:
Generics (U.K.) Limited

Headword:
Lixisenatide in combination with sulfonylurea/SANOFI

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - agreement to text of the patent as granted
withdrawn by patent proprietor - patent revoked

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0256/18 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 14 October 2021

Appellant: Generics (U.K.) Limited
(Opponent) Station Close
Potters Bar
Hertfordshire EN6 1TL (GB)

Representative: FRKelly
27 Clyde Road
Dublin D04 F838 (IE)

Respondent: Sanofi-Aventis Deutschland GmbH
(Patent Proprietor) Brüningstraße 50
65929 Frankfurt am Main (DE)

Representative: Weickmann & Weickmann PartmbB
Postfach 860 820
81635 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 November 2017 concerning maintenance of the
European Patent No. 2691109 in amended form.**

Composition of the Board:

Chairwoman G. Alt
Members: D. Luis Alves
R. Romandini

Summary of Facts and Submissions

- I. European patent No. 2 691 109, entitled "*Prevention of hypoglycaemia in diabetes mellitus type 2 patients*" was opposed under Article 100(a) and (b) EPC.
- II. By way of an interlocutory decision, the opposition division held that the patent on the basis of auxiliary request 6 complied with the requirements of the EPC.
- III. Both the patent proprietor and the opponent filed an appeal against this decision.
- IV. With their statement of grounds of appeal the opponent (in the following "appellant") requested, *inter alia*, that the decision under appeal be set aside and the patent be revoked.
- V. Three written submissions were received from the patent proprietor (in the following "respondent"). In the last one, the respondent stated that they withdrew their appeal, and they requested, *inter alia*, as a main request, that the appeal be dismissed (i.e. that the patent be maintained on the basis of the set of claims which the opposition division considered to meet the requirements of the EPC) or, alternatively that the decision under appeal be set aside and the patent be maintained on the basis of the set of claims of an auxiliary request 1.
- VI. As both parties had requested oral proceedings on an auxiliary basis, the board issued a summons to oral proceedings and also a communication pursuant to Article 15(1) RPBA.

VII. Oral proceedings were held on 14 October 2021. The appellant was not represented, as they had announced beforehand. At the end of the oral proceedings, the respondent stated that they withdrew all the pending requests as well as their agreement with the text of the patent as granted.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.
2. The appellant did not attend the oral proceedings. The proceedings were continued in their absence; the appellant was treated as relying on their written case in view of Rule 115(2) EPC and Article 15(3) RPBA.
3. According to Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
4. Such an agreement is deemed not to exist if the patent proprietor - as in the present case - has withdrawn all the pending requests as well as their agreement with the text of the patent as granted.
5. There is therefore no text on the basis of which the board can decide.
6. It is established case law of the boards of appeal that, under these circumstances, the patent is to be revoked without further examination of the case as to patentability (see decision T 73/84, OJ EPO 1985, 241,

followed by numerous decisions, see Case Law of the Boards of Appeal of the European Patent Office, 9th Edition 2019, IV.D.2). The board has no reason to deviate from this approach of the boards of appeal.

7. There are also no ancillary issues that would have to be dealt with by the board in the present appeal case.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



A. Chavinier Tomsic

G. Alt

Decision electronically authenticated