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**Datasheet for the decision  
of 8 February 2022**

**Case Number:** T 1653/18 - 3.3.02

**Application Number:** 10183144.4

**Publication Number:** 2332952

**IPC:** C07H19/10, C07H19/20,  
A61K31/7084, A61P35/00

**Language of the proceedings:** EN

**Title of invention:**

Modified 2' and 3'-nucleoside prodrugs for treating flaviridae infections

**Patent Proprietor:**

IDENIX Pharmaceuticals, Inc.  
Centre National de la Recherche Scientifique  
(C.N.R.S.)  
UNIVERSITA' DEGLI STUDI DI CAGLIARI  
L'Université Montpellier II

**Opponents:**

Gilead Sciences, Inc.  
Generics (U.K.) Limited

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor

**Decisions cited:**

T 1021/15

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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European Patent Office  
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**Case Number:** T 1653/18 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 8 February 2022**

**Appellant:** IDENIX Pharmaceuticals, Inc.  
(Patent Proprietor 1) 320 Bent Street, Floor 4  
Cambridge, MA 02141 (US)

**Appellant:** Centre National de la Recherche Scientifique  
(Patent Proprietor 2) (C.N.R.S.)  
3 rue Michel-Ange  
75794 Paris Cedex 16 (FR)

**Appellant:** UNIVERSITA' DEGLI STUDI DI CAGLIARI  
(Patent Proprietor 3) Dip. Biologia Sperimentale,  
Sezione di Microbiologia,  
Cittadella Universitaria SS 554, Km. 4.500  
09042 Monserrato (IT)

**Appellant:** L'Université Montpellier II  
(Patent Proprietor 4) 2, Place Eugène Bataillon  
34095 Montpellier Cedex 5 (FR)

**Representative:** Jones Day  
Rechtsanwälte, Attorneys-at-Law, Patentanwälte  
Prinzregentenstrasse 11  
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**Respondent:** Gilead Sciences, Inc.  
(Opponent 1) 333 Lakeside Drive  
Foster City CA 94404 (US)

**Representative:** Nieuwenhuys, William Francis  
Marks & Clerk LLP  
15 Fetter Lane  
London EC4A 1BW (GB)

**Respondent:** Generics (U.K.) Limited  
(Opponent 2) Station Close  
Potters Bar  
Hertfordshire EN6 1TL (GB)

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

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 26 April 2018  
revoking European patent No. 2332952 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** P. O'Sullivan  
L. Bühler  
A. Lenzen  
L. Basterreix

## **Summary of Facts and Submissions**

- I. The appeal of the patent proprietors (hereinafter appellants) lies from the decision of the opposition division according to which European patent 2 332 952 was revoked.
- II. The parties were summoned to oral proceedings, which were held by videoconference on 8 February 2022.
- III. At the outset of oral proceedings, the appellants requested *inter alia* that the decision under appeal be reversed and set aside, and that the case be remitted to the opposition division for further prosecution on the basis of the main request (patent as granted), or, alternatively, of one of the sets of claims of the first to sixth auxiliary requests filed on 19 September 2016.
- IV. The opponent (respondent) 1 requested *inter alia* that the appeal be dismissed.
- V. Oral proceedings by videoconference were held on 8 February 2022. During oral proceedings, the appellants withdrew their consent and agreement under Article 113(2) EPC to the text of the patent as granted and withdrew all auxiliary requests on file.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. Since the appellants withdrew their consent and agreement under Article 113(2) EPC to the text of the patent and withdrew all auxiliary requests on file, there is no text of the patent submitted or agreed by the proprietors of the patent, on the basis of which the board can consider compliance with the requirements of the EPC and the allowability of the appeal.
  
3. In such a situation, where the appeal of the patent proprietor against a decision of the opposition division to revoke the patent lacks basis for a review of the appealed decision as to the substance, the proceedings should be terminated without addressing substantive issues (T 1021/15, reasons 2). Consequently, the opposition division's revocation of the patent becomes final. There are also no ancillary issues that would have to be dealt with by the board in the present case. Therefore, the appeal is to be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated