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**Datasheet for the decision
of 25 June 2020**

Case Number: T 1744/18 - 3.3.07

Application Number: 06820561.6

Publication Number: 1988877

IPC: A61K9/06, A61K9/107, A61K47/10,
A61P35/00

Language of the proceedings: EN

Title of invention:

THERAPEUTIC COMPOSITIONS COMPRISING INGENOL-3-ANGELATE

Patent Proprietor:

LEO LABORATORIES LIMITED

Opponents:

Sandoz AG
Actavis PTC ehf
Galenicum Health S.L.

Headword:

THERAPEUTIC COMPOSITIONS COMPRISING INGENOL-3-ANGELATE/LEO
LABORATORIES LIMITED

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

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 1744/18 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 25 June 2020

Appellant:
(Opponent 1)

Sandoz AG
Lichtstrasse 35
4056 Basel (CH)

Representative:

Guggenberger, Christoph
Hexal AG
Industriestraße 25
83607 Holzkirchen (DE)

Respondent:
(Patent Proprietor)

LEO LABORATORIES LIMITED
285 Cashel Road
Crumlin
Dublin 2 (IE)

Representative:

Wise, Daniel Joseph
Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Party as of right:
(Opponent 2)

Actavis PTC ehf
Reykjavikurvegur 76-78
220 Hafnarfjordur (IS)

Representative:

Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Party as of right:
(Opponent 3)

Galenicum Health S.L.
Avenida Diagonal 123 floor 11
08005 Barcelona (ES)

Representative:

Galenicum Health S.L.
Avenida Diagonal 123, Floor 11
08005 Barcelona (ES)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 May 2018 concerning maintenance of the
European Patent No. 1988877 in amended form.

Composition of the Board:

Chairman A. Usuelli

Members: D. Boulois

P. Schmitz

Summary of Facts and Submissions

- I. European patent No. 1 988 877 was granted on the basis of a set of 45 claims.
- II. The patent was opposed under Article 100 (a), (b) and (c) EPC, on the grounds that the subject-matter of the granted patent lacked novelty and inventive step, was not sufficiently disclosed and its subject-matter extended beyond the content of the application as filed.
- III. The present appeal by opponent 01 (hereinafter the appellant) lies from the decision of the opposition division finding that the patent in amended form met the requirements of the EPC.
- IV. With a letter dated 17 June 2020, the respondent stated that it no longer approved the text in which European patent no. 1 988 877 was granted and that no amended text would be submitted. The respondent mentioned that it understood that the consequence would be revocation of the patent.

Reasons for the Decision

1. Pursuant 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.

Such agreement is not deemed to exist if the patent proprietor, as in the present case, has expressly

stated that it disapproved the text of the granted patent and stated that it would not submit an amended text.

There is therefore no text on the basis of which the board can maintain the patent. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability.

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:



L. Malécot-Grob

A. Uselli

Decision electronically authenticated