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**Datasheet for the decision  
of 28 January 2022**

**Case Number:** T 1936/18 - 3.3.02

**Application Number:** 11760068.4

**Publication Number:** 2550286

**IPC:** C07H17/08, A61K31/7048

**Language of the proceedings:** EN

**Title of invention:**

CRYSTALLINE FORMS OF A MACROLIDE, AND USES THEREFOR

**Patent Proprietor:**

Cempra Pharmaceuticals, Inc.

**Opponent:**

LEK Pharmaceuticals d.d.

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text submitted or agreed by patent proprietor (no)

**Decisions cited:**

T 0073/84, T 0186/84, T 0463/90, T 0798/90, T 0014/99,  
T 1844/17, T 3007/18

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1936/18 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 28 January 2022**

**Appellant:** LEK Pharmaceuticals d.d.  
(Opponent) Verovskova 57  
1526 Ljubljana (SI)

**Representative:** Altmann Stöbel Dick Patentanwälte PartG mbB  
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80331 München (DE)

**Respondent:** Cempra Pharmaceuticals, Inc.  
(Patent Proprietor) 6320 Quadrangle Drive, Suite 360  
Chapel Hill, NC 27517 (US)

**Representative:** Elsy, David  
Withers & Rogers LLP  
2 London Bridge  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 17 May 2018  
rejecting the opposition filed against European  
patent No. 2550286 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** M. Maremonti  
P. de Heij

## **Summary of Facts and Submissions**

- I. The appeal by the opponent ("appellant") lies from the decision of the opposition division to reject the opposition against European patent No. 2 550 286 ("the patent").
- II. In its statement of grounds of appeal, the appellant requested that the appealed decision be set aside and that the patent be revoked.
- III. In its reply to the statement of grounds of appeal, the the patent proprietor requested that the patent be maintained as granted, meaning that the appeal be dismissed. Alternatively, it requested that the patent be maintained on the basis of the claims according to one of auxiliary requests 1 to 3 as filed with its reply to the statement of grounds of appeal.
- IV. The board summoned the parties to oral proceedings to be held on 26 April 2022.
- V. By letter dated 19 January 2022, the patent proprietor withdrew all requests on file, disapproved the text of the granted patent and offered no alternative text for the granted patent.
- VI. By communication dated 26 January 2022, the board cancelled the oral proceedings.

## **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 patent proprietor withdrew all requests on file, disapproved the text of the granted patent and offered no alternative text for the granted patent, there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the boards of appeal (see T 0073/84, OJ EPO 1985, page 241, T 0186/84, OJ EPO 1986, page 79, T 0798/90, T 0463/90, T 0014/99, T 1844/17, T 3007/18) that, under these circumstances, the patent is to be revoked without further substantive examination. There are also no ancillary issues that would have to be dealt with by the board in the present case.

## Order

### For these reasons it is decided that:

1. The appealed decision is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated