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**Datasheet for the decision  
of 17 December 2020**

**Case Number:** T 2851/18 - 3.3.04

**Application Number:** 10747854.7

**Publication Number:** 2611458

**IPC:** A61K38/26, A61K38/22, A61P3/10

**Language of the proceedings:** EN

**Title of invention:**  
Use of AVE0010 for the manufacture of a medicament for the  
treatment of Diabetes mellitus Type 2

**Patent Proprietor:**  
Sanofi-Aventis Deutschland GmbH

**Opponent:**  
Generics (U.K.) Limited

**Headword:**  
Lixisenatide for treating obese type 2 diabetics/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withdrawn by patent proprietor - patent revoked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 2851/18 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 17 December 2020**

**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) Brüningsstraße 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  
24 October 2018 concerning maintenance of the  
European Patent No. 2611458 in amended form.**

**Composition of the Board:**

**Chairwoman** G. Alt  
**Members:** O. Lechner  
E. Mille

## **Summary of Facts and Submissions**

- I. European patent No. 2 611 458, entitled "*Use of AVE0010 for the manufacture of a medicament for the treatment of Diabetes mellitus Type 2*" was opposed under Articles 100(a) to (c) EPC.
- II. By way of an interlocutory decision, the opposition division held that the patent on the basis of an amended main request met the requirements of the European Patent Convention.
- III. The opponent (appellant) filed an appeal against this decision and requested that the decision under appeal be set aside and the patent be revoked, and furthermore oral proceedings on an auxiliary basis.
- IV. The patent proprietor (respondent) requested that the appeal be dismissed as their main request, or, alternatively, that the patent be maintained on the basis of the sets of claims of one of auxiliary requests 1 or 2, both previously filed before the opposition division, or, further alternatively, that the case be remitted to the opposition division for examination of the first or second auxiliary request. Finally, oral proceedings were requested on an auxiliary basis.
- V. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- VI. In reply, the appellant informed that they maintained the appeal but that they would not attend the oral proceedings. The respondent filed a further submission.

VII. Oral proceedings were held on 17 December 2020 in the absence of the appellant. At these proceedings, the respondent disapproved of the text of the patent as granted with the intention that the patent ceased to exist and the appeal proceedings be terminated immediately.

### **Reasons for the Decision**

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is therefore admissible.
2. The appellant did not attend the oral proceedings. The proceedings were continued and the appellant treated as relying on their written case in view of Rule 115(2) EPC and Article 15(3) RPBA.

#### *Disapproval of the text of the patent by the patent proprietor*

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 not deemed to exist if the patent proprietor - as in the present case - has expressly stated that they no longer approve the text of the patent as granted with the intention that the patent ceases to exist and the appeal proceedings be terminated immediately.
5. There is therefore no text on the basis of which the board can maintain the patent. In the present circumstances, the proceedings are therefore to be terminated by a decision ordering revocation of the

patent, without substantive examination as to patentability (see decision T 73/84, OJ EPO, 1985, 241 and Case Law of the Boards of Appeal 9th edition, 2019, IV.D.2, paragraphs 2 and 3). The board has no reason to deviate from this consistent approach of the Boards of Appeal.

## 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:



L. Malécot-Grob

G. Alt

Decision electronically authenticated