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**Datasheet for the decision
of 24 May 2023**

Case Number: T 1139/19 - 3.3.07

Application Number: 07716309.5

Publication Number: 1973549

IPC: A61K31/715, A61P7/06

Language of the proceedings: EN

Title of invention:

METHODS AND COMPOSITIONS FOR ADMINISTRATION OF IRON

Patent Proprietor:

Vifor (International) AG

Opponents:

Hoffmann Eitle
Pharmacosmos Holding A/S
TEVA PHARMACEUTICAL INDUSTRIES, LTD.
HGF Limited
STADA Arzneimittel AG
Taylor Wessing LLP
Generics [U.K.] Limited

Headword:

Iron carboxymaltose complex/VIFOR

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84



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 1139/19 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 24 May 2023

Appellant: Vifor (International) AG
(Patent Proprietor) Rechenstraße 37
9001 St. Gallen (CH)

Representative: Gille Hrabal Partnerschaftsgesellschaft mbB
Patentanwälte
Postfach 18 04 09
40571 Düsseldorf (DE)

Appellant: Hoffmann Eitle
(Opponent 1) Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Appellant: Pharmacosmos Holding A/S
(Opponent 2) Rørvangsvej 30 Postboks 40
4300 Holbæk (DK)

Representative: Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Appellant: TEVA PHARMACEUTICAL INDUSTRIES, LTD.
(Opponent 3) 124 Dvora HaNevi'a St.
6944020 Tel Aviv (IL)

Representative: Lederer & Keller Patentanwälte
Partnerschaft mbB
Unsöldstraße 2
80538 München (DE)

Appellant: STADA Arzneimittel AG
(Opponent 5) Stadastraße 2-18
61118 Bad Vilbel (DE)

Representative: Kernebeck, Thomas
Kernebeck Patentanwalts GmbH
Stiftstraße 2
60313 Frankfurt am Main (DE)

Appellant: Taylor Wessing LLP
(Opponent 6) 5 New Street Square
London EC4A 3TW (GB)

Representative: Pfizer
European Patent Department
23-25 avenue du Docteur Lannelongue
75668 Paris Cedex 14 (FR)

Appellant: Generics [U.K.] Limited
(Opponent 7) Station Close
Potters Bar Herfordshire EN6 1TL (GB)

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

Party as of right: HGF Limited
(Opponent 4) 1 City Walk
Leeds Yorkshire LS11 9DX (GB)

Representative: HGF
HGF Limited
1 City Walk
Leeds LS11 9DX (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
28 February 2019 concerning maintenance of the
European Patent No. 1973549 in amended form**

Composition of the Board:

Chairman A. Usuelli
Members: J. Molina de Alba
M. Blasi

Summary of Facts and Submissions

- I. The decision under appeal is the opposition division's interlocutory decision rejecting the patent proprietor's main request and finding that European patent No. 1 973 549 as amended in the form of the first auxiliary request met the requirements of the EPC.
- II. Seven oppositions had been filed.
- III. The patent proprietor (appellant-patent proprietor) and opponents 3 and 7 (appellant-opponents 3 and 7) each duly filed an appeal against the opposition division's decision.

Opponents 1, 2, 5 and 6 (parties as of right) each filed an appeal that they subsequently withdrew. Opponent 4 (party as of right) did not file any appeal.
- IV. The board scheduled oral proceedings in line with the parties' requests and gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- V. Oral proceedings were held before the board on 24 May 2023. During the oral proceedings, the appellant-patent proprietor stated that it withdrew the main request and all auxiliary requests submitted in the appeal proceedings and that it no longer approved the text of the patent.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by its proprietor.
2. By disapproving the text of the granted patent and withdrawing all amended text versions submitted to the EPO, the patent proprietor withdrew its approval of any text for maintenance of the patent. Therefore, there is no approved text of the patent on the basis of which the board can decide on the appeal.
3. In these circumstances, it is established case law that the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, section IV.D.2). The board has no reason to deviate from this case law.

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:



B. Atienza Vivancos

A. Uselli

Decision electronically authenticated