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**Datasheet for the decision
of 3 May 2021**

Case Number: T 1375/19 - 3.3.07

Application Number: 13178507.3

Publication Number: 2679217

IPC: A61K9/00, A61K47/10, A61K47/26,
A61K47/32, A61K38/48

Language of the proceedings: EN

Title of invention:
Non-protein stabilized clostridial toxin pharmaceutical
compositions

Patent Proprietor:
ALLERGAN, INC.

Opponent:
IPSEN PHARMA S.A.S.

Headword:
Stabilized clostridial toxin/ALLERGAN

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84



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Case Number: T 1375/19 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 3 May 2021

Appellant: ALLERGAN, INC.
(Patent Proprietor) 2525 Dupont Drive
Irvine, CA 92612 (US)

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

Appellant: IPSEN PHARMA S.A.S.
(Opponent) 65, Quai Georges Gorse
92100 Boulogne-Billancourt (FR)

Representative: Plasseraud IP
66, rue de la Chaussée d'Antin
75440 Paris Cedex 09 (FR)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
12 March 2019 concerning maintenance of the
European Patent No. 2679217 in amended form.**

Composition of the Board:

Chairman A. Uselli
Members: M. Steendijk
P. Schmitz

Summary of Facts and Submissions

I. In its interlocutory decision posted on 12 March 2019, the opposition division considered that European patent No. 2 679 217 (hereinafter: the patent) in an amended form met the requirements of the EPC.

II. The proprietor (hereinafter: appellant-patent proprietor) and the opponent (hereinafter: appellant-opponent) filed appeals against this decision.

The appellant-patent proprietor requested that the decision under appeal be set aside and that the patent be maintained as granted or, subsidiarily, that the patent be maintained on the basis of one of the auxiliary requests 1-7 as filed with the grounds of appeal.

The appellant-opponent requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

III. With a letter dated 19 April 2021 the appellant-patent proprietor withdrew its appeal and requested 50% reimbursement of the appeal fee in line with Rule 103(3)a) EPC.

The appellant-patent proprietor was informed of the refund order in a communication dated 28 April 2021.

IV. In a letter dated 21 April 2021 the appellant-patent proprietor declared that it no longer approved the text in which the patent was granted, that it withdrew all auxiliary requests and that it did not intend to submit

further amendments, observing that the patent is to be revoked.

Reasons for the Decision

1. The appellant-patent proprietor has indicated that it no longer agrees with the text of the patent as granted and that following the withdrawal of its auxiliary requests 1-7 it did not intend to provide any alternative claims. Pursuant to Article 113(2) EPC a patent can only be maintained on the basis of a text submitted or agreed to by the patent proprietor. In the absence of such agreed text the patent can only be revoked (cf decision T 0073/84 (OJ EPO 1985, 241)).

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