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**Datasheet for the decision
of 24 March 2022**

Case Number: T 2161/19 - 3.3.07

Application Number: 14762343.3

Publication Number: 2968434

IPC: A61K38/00, A61P31/00,
A61K38/48, A61K38/55,
A61K38/16, A61K38/57

Language of the proceedings: EN

Title of invention:

C1-INH COMPOSITIONS FOR USE IN THE PREVENTION AND TREATMENT OF
HEREDITARY ANGIOEDEMA (HAE).

Patent Proprietor:

ViroPharma Biologics LLC

Opponent:

Octapharma AG

Headword:

C1-INH COMPOSITIONS FOR USE IN THE PREVENTION AND TREATMENT OF
HEREDITARY ANGIOEDEMA (HAE)./ViroPharma Biologics LLC

Relevant legal provisions:

EPC Art. 111, 113(2)

Keyword:

Agreement to text of patent withdrawn

Appealed decision becomes final - patent revoked

Decisions cited:

T 0018/92, T 0481/96, T 1226/18



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Case Number: T 2161/19 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 24 March 2022

Appellant: ViroPharma Biologics LLC
(Patent Proprietor) 300 Shire Way
Lexington, MA 02421 (US)

Representative: Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Respondent 1: Octapharma AG
(Opponent 1) Seidenstrasse 2
8853 Lachen (CH)

Representative: Ullrich & Naumann PartG mbB
Schneidmühlstrasse 21
69115 Heidelberg (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 17 May 2019
revoking European patent No. 2968434 pursuant to
Article 101(3) (b) EPC.

Composition of the Board:

Chairman A. Usuelli
Members: D. Boulois
 Y. Podbielski

Summary of Facts and Submissions

The appeal was filed by the patent proprietor (appellant) against the decision of the opposition to revoke the patent in suit.

The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request filed on 11 April 2019, or on the basis of the claims as granted as auxiliary request 1, or on the basis of one of auxiliary requests 2-34 filed as auxiliary requests 1-33 with letter dated 21 August 2018. Respondent 1 (opponent 1) requested that the appeal be dismissed. Respondent 2 (opponent 2) withdrew its opposition on 5 January 2022.

In its letter dated 17 March 2022 the appellant declared that it withdrew its approval to the text of the granted patent and withdrew all outstanding requests, including its request for oral proceedings. The appellant added that in the absence of a text agreed by the patentee, the proceedings are terminated by failure to comply with Article 113(2) EPC, and that in such cases the proceedings are terminated by a decision ordering revocation of the patent without reference to the substantive issues.

Following the appellant's letter the oral proceedings scheduled for 12 April 2022 were cancelled.

Reasons for the Decision

Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. Such an agreement cannot be deemed to exist where - as in the present case - the proprietor expressly states that it no longer

approves of the text of the patent as granted and withdraws all pending requests.

In these circumstances, the proceedings are usually terminated by a decision ordering revocation of the patent, without examination as to patentability.

However, in the present case the patent has already been revoked by the opposition division. The appellant's request seeks the same legal result as that reached by the opposition division. The appellant is thus no longer interested in the continuation of the appeal proceedings nor in a decision in respect of the appeal under Article 111 EPC. Therefore, the Board interprets the appellant's request as a withdrawal of the appeal, in line with numerous previous decisions of the Boards (e.g. T 18/92, T 481/96 or more recently T 1226/18).

Order

For these reasons it is decided that:

The appeal proceedings are terminated. The decision of the opposition division revoking the patent becomes final.

The Registrar:

The Chairman:



B. Atienza Vivancos

A. Uselli

Decision electronically authenticated