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**Datasheet for the decision
of 18 September 2020**

Case Number: T 2618/19 - 3.3.01

Application Number: 14164565.5

Publication Number: 2762140

IPC: A61K31/436, A61P35/00

Language of the proceedings: EN

Title of invention:

Treatment of solid brain tumours with a rapamycin derivative

Patent Proprietor:

Novartis AG

Opponents:

Generics (U.K.) Limited
Ethypharm

Headword:

Everolimus solid brain tumour/NOVARTIS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - agreement to text withdrawn by patent proprietor

Decisions cited:

T 0073/84



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 2618/19 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 18 September 2020

Appellant: Generics (U.K.) Limited
(Opponent 1) Station Close
Potters Bar
Hertfordshire EN6 1TL (GB)

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

Respondent: Novartis AG
(Patent Proprietor) Lichtstrasse 35
4056 Basel (CH)

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

Party as of right: Ethypharm
(Opponent 2) 194 Bureaux de la Colline
92213 Saint-Cloud (FR)

Representative: LLR
11 boulevard de Sébastopol
75001 Paris (FR)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 July 2019
rejecting the opposition filed against European
patent No. 2762140 pursuant to
Article 101(2) EPC**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal, duly filed by opponent 1 (appellant), lies against the opposition division's decision to reject the two oppositions filed against European patent No. 2 762 140.
- II. The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- III. Opponent 2 (party as of right) did not file any request during these appeal proceedings.
- IV. The board summoned the parties to oral proceedings in line with their requests. Subsequently, the board gave its preliminary opinion.
- V. In a letter dated 9 September 2020, the patent proprietor (respondent) stated:

"the patentee therefore no longer approves the text in which the patent was granted, and withdraws (i) all of its existing requests and (ii) its approval of the text on which the patent was granted. The patentee will not be filing any replacement text, and understands that the consequence of these actions is that the patent will be revoked, in line with long-standing case law (e.g. as summarised in T1288/18, going back to T73/84)."
- VI. In a letter dated 14 September 2020, the appellant suggested that the board include in its decision a comment restating its preliminary opinion on the issue of added subject-matter.

VII. The board cancelled the scheduled oral proceedings.

Reasons for the Decision

1. The appeal is admissible. It complies with the requirements of Article 106 to 108 EPC and Rule 99 EPC.
2. 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 the proprietor of the patent.
3. By disapproving the granted text of the patent, stating that a replacement text will not be filed, and withdrawing all pending requests, the respondent has withdrawn its approval of any text for maintenance of the patent. There is therefore no valid text of the patent on the basis of which the board can consider maintaining the patent.
4. It is established case law that in the present circumstances 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 consistent approach of the boards of appeal, with the consequence that the patent is to be revoked.
5. Revocation of the patent complies with the parties' requests. There are also no other issues to be decided upon in the present appeal case. In particular, the

content of the appellant's letter dated 14 September 2020 is not relevant for the present decision to be taken. The decision can therefore be taken without holding oral proceedings.

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:



M. Schalow

A. Lindner

Decision electronically authenticated