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**Datasheet for the decision  
of 13 January 2023**

**Case Number:** T 0043/22 - 3.3.02

**Application Number:** 16714015.1

**Publication Number:** 3274346

**IPC:** C07D405/14, C07D405/12,  
C07D307/92, A61K31/343,  
A61P35/00

**Language of the proceedings:** EN

**Title of invention:**  
WATER-SOLUBLE PRODRUGS

**Applicant:**  
Sumitomo Dainippon Pharma Oncology, Inc.  
Sumitomo Pharma Co., Ltd.

**Relevant legal provisions:**  
EPC R. 103(2), 103(3) (c)

**Keyword:**  
Reimbursement of appeal fee

**Decisions cited:**  
T 0853/16



**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 0043/22 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 13 January 2023**

**Appellant:** Sumitomo Dainippon Pharma Oncology, Inc.  
(Applicant 1) 640 Memorial Drive  
Cambridge, MA 02139 (US)

**Appellant:** Sumitomo Pharma Co., Ltd.  
(Applicant 2) 6-8, Doshomachi 2-chome  
Chuo-ku,  
Osaka-shi,  
Osaka 541-0045 (JP)

**Representative:** Carridge, Andrew Edward  
Reddie & Grose LLP  
The White Chapel Building  
10 Whitechapel High Street  
London E1 8QS (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 27 August 2021  
refusing European patent application No.  
16714015.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** A. Lenzen  
R. Romandini

## **Summary of Facts and Submissions**

- I. The patent applicants lodged an appeal against the examining division's decision to refuse European patent application No. 16714015.1.
- II. By letter dated 27 September 2022, the patent applicants withdrew their appeal. They also requested that the appeal fee be reimbursed at 75% in accordance with Rule 103 EPC.
- III. On 4 October 2022, the board issued a communication stating that it saw only a legal basis for a reimbursement of the appeal fee at 50% but not 75%. The patent applicants were given a time limit of two months to file observations. No such observations were received within the prescribed time limit.

## **Reasons for the Decision**

1. When withdrawing their appeal, the patent applicants requested that the appeal fee be reimbursed at 75% in accordance with Rule 103 EPC.
  - 1.1 Rule 103(2) EPC stipulates that the appeal fee shall be reimbursed at 75% if, in response to a communication from the board indicating its intention to start substantive examination of the appeal, the appeal is withdrawn within two months of notification of that communication. It follows that a board's communication indicating its intention to start substantive examination of the appeal is a mandatory requirement for the 75% refund of the appeal fee under Rule 103(2) EPC (T 853/16, points 3 ff. of the Reasons, in particular points 5 and 7).

- 1.2 However, in the present case, the board had not issued such a communication. Consequently, the request for a reimbursement of the appeal fee at 75% is refused.
2. Because the appeal was withdrawn after the filing of the statement of grounds of appeal, the appeal fee shall nevertheless be reimbursed at 50% pursuant to Rule 103(3)(c) EPC.

### **Order**

#### **For these reasons it is decided that:**

The appeal fee is reimbursed at 50%.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated