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**Datasheet for the decision  
of 29 May 2024**

**Case Number:** T 1972/22 - 3.3.08

**Application Number:** 11180106.4

**Publication Number:** 2447252

**IPC:** C07D213/81, C07D213/87,  
C07D215/50, C07D231/14,  
C07D239/42, C07D239/48,  
C07D239/84, C07D401/12,  
C07D405/12, C07D409/12,  
C07D253/065

**Language of the proceedings:** EN

**Title of invention:**  
Theramutein modulators

**Patent Proprietor:**  
HMI Medical Innovations, LLC.

**Opponent:**  
James Poole Limited

**Headword:**  
Theramutein modulators/HMI MEDICAL INNOVATIONS

**Relevant legal provisions:**  
EPC 1973 Art. 113(1), 116(1)  
RPBA 2020 Art. 12(8)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84, T 0186/84, T 0646/08, T 2434/18

**Catchword:**

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Case Number: T 1972/22 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 29 May 2024**

**Appellant:** James Poole Limited  
(Opponent) One Southampton Row  
London WC1B 5HA (GB)

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

**Respondent:** HMI Medical Innovations, LLC.  
(Patent Proprietor) 16800 West Twelve Mile Rd.  
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Southfield, MI 48076 (US)

**Representative:** Witthoff Jaekel Steinecke Patentanwälte PartG mbB  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
7 June 2022 concerning maintenance of the  
European Patent No. 2447252 in amended form**

**Composition of the Board:**

**Chair** T. Sommerfeld  
**Members:** B. Claes  
A. Bacchin

## Summary of Facts and Submissions

- I. The appeal lodged by the opponent (appellant) lies from the interlocutory decision of the opposition division that European patent No. 2 447 252 with the set of claims of the main request (filed during oral proceedings) and the invention to which it relates meet the requirements of the EPC.
- II. The appellant requested *inter alia* that the decision under appeal be set aside and the patent be revoked.
- III. The patent proprietor (respondent) replied to the appeal, thereby requesting that the appeal be dismissed (main request), or alternatively, that the decision under appeal be set aside and the patent be maintained with the set of claims of auxiliary request 1, 2, 3, 3a, 3b, 3c, 4, 4a, 4b or 4c.
- IV. The board summoned the parties to oral proceedings in accordance with their requests.
- V. With a letter dated 28 May 2024 the patent proprietor informed the board as follows:  
  

*"The patentee hereby expressly disapproves of the text of the granted patent in any form and is not offering any alternative text. The patentee withdraws all auxiliary requests and withdraws the request for oral proceedings."*
- VI. The board cancelled the oral proceedings.

## **Reasons for the Decision**

1. The opponent's appeal complies with the requirements of Articles 106 to 108 EPC and the further provisions referred to in Rule 101 EPC and is admissible.
2. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
3. Since the text of a patent is at the disposition of the patent proprietor(s), their patent cannot be maintained against their will. In the case in hand the patent proprietor withdrew its approval of the text of the patent as granted. By withdrawing all their requests, it also unequivocally withdrew its approval of the text of the patent as amended according to any of the auxiliary requests. Consequently, there is therefore no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC, so that it is no longer possible to take a decision as to substance (see e.g. decisions T 186/84, OJ 1986, 79, Reasons 5; T 646/08, Reasons 4 and T 2434/18, Reasons 4).
4. It is established case law that in the present circumstances the decision under appeal must be set aside and the patent 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, 10th

edition 2022, sections III.B.3.3 and 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 request of the appellant. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA 2020).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated