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**Datasheet for the decision
of 21 January 2025**

Case Number: T 1975/22 - 3.3.04

Application Number: 11787655.7

Publication Number: 2640371

IPC: A61K31/155, A61K31/4184,
A61K31/522, A61P3/10

Language of the proceedings: EN

Title of invention:

VASOPROTECTIVE AND CARDIOPROTECTIVE ANTIDIABETIC THERAPY

Patent Proprietor:

Boehringer Ingelheim International GmbH

Opponents:

Galenicum Health S.L.U.
Hexal AG

Headword:

Antidiabetic therapy / BOEHRINGER

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Basis of decision - text or agreement to text withdrawn by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, T 0186/84, T 0646/08, T 2434/18



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 1975/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 21 January 2025

Appellant:
(Opponent 2)

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Representative:

Greiner, Elisabeth
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Patentanwälte Rechtsanwälte PartG mbB
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Respondent:
(Patent Proprietor)

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Representative:

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Party as of right:
(Opponent 1)

Galenicum Health S.L.U.
CL Sant Gabriel n°50
08950 Esplugues de Llobregat (ES)

Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 June 2022 concerning maintenance of the
European Patent No. 2640371 in amended form**

Composition of the Board:

Chair	M. Pregetter
Members:	S. Albrecht
	L. Bühler

Summary of Facts and Submissions

- I. Two oppositions were filed against European patent 2 640 371 ("patent") under Article 100(a) EPC in conjunction with Articles 54 and 56 EPC and under Article 100(b) EPC.
- II. The opposition division decided that the patent as amended according to the main request, the claims of which had been filed on 2 March 2021, and the invention to which it relates, met the requirements of the EPC.
- III. Opponent 2 ("appellant") filed an appeal against this decision. The appellant requested that the decision under appeal be set aside and the patent be revoked, and furthermore oral proceedings on an auxiliary basis.
- IV. The patent proprietor ("respondent") requested as its main request that the appeal be dismissed, alternatively that the patent be maintained on the basis of one of auxiliary requests 1 to 7 filed on 4 May 2022 before the opposition division. The respondent also requested oral proceedings on an auxiliary basis.
- V. Opponent 1, party as of right to the appeal proceedings, has not made any substantive submissions in the appeal proceedings.
- VI. The Board issued a summons to oral proceedings and a subsequent communication pursuant to Article 15(1) RPBA.
- VII. Oral proceedings were held on 21 January 2025 in the presence of the appellant and the respondent. During

the oral proceedings, the respondent withdrew its consent and agreement under Article 113(2) EPC to the text of the patent as granted, withdrew all requests on file, and indicated that it would not be filing a replacement text. At the end of the oral proceedings, the Chair announced the Board's decision.

Reasons for the Decision

1. 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.
2. In view of the patent proprietor's statement during the oral proceedings (point VII. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (T 186/84, OJ 1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons).
3. 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, 10th edition 2022, IV.D.2).

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:



I. Aperribay

M. Pregetter

Decision electronically authenticated