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**Datasheet for the decision
of 16 May 2024**

Case Number: T 0039/23 - 3.3.02

Application Number: 18157435.1

Publication Number: 3348553

IPC: C07D401/04, A61K31/4439,
A61K31/4184, A61P35/00

Language of the proceedings: EN

Title of invention:

CRYSTALLINE FORMS OF AN ANDROGEN RECEPTOR MODULATOR

Patent Proprietor:

Aragon Pharmaceuticals, Inc.
Sloan-Kettering Institute for Cancer Research

Opponents:

SANDOZ AG
Scorpio IP Limited

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by the
patent proprietors

Decisions cited:

T 0073/84



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0039/23 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 16 May 2024

Appellant:
(Opponent 1)

SANDOZ AG
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4056 Basel (CH)

Representative:

Ter Meer Steinmeister & Partner
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80335 München (DE)

Appellant:
(Opponent 2)

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Representative:

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Marlow International
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Respondent:
(Patent Proprietor 1)

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Respondent:
(Patent Proprietor 2)

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Representative:

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 11 November
2022 rejecting the opposition filed against
European patent No. 3348553 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: P. O'Sullivan
 L. Bühler

Summary of Facts and Submissions

- I. The appeals of opponents 1 and 2 (hereinafter appellants 1 and 2) lie from the decision of the opposition division to reject the oppositions against European patent EP 3 348 553.

- II. During oral proceedings before the board, held as scheduled in the presence of all parties on 16 May 2024, the patent proprietors withdrew their consent and agreement under Article 113(2) EPC to the text of the patent as granted and also withdrew all requests on file.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. The patent proprietors withdrew their consent and agreement to the text of the patent as granted. Furthermore, all requests pending in the appeal proceedings were also withdrawn. Consequently, there is no text of the patent submitted or agreed by the proprietor of the patent, on the basis of which the board can consider compliance with the requirements of the EPC.

3. It is established case law of the Boards of Appeal since decision T 73/84 (OJ EPO 1985, 241) that under such circumstances, the patent is to be revoked without further substantive examination.

4. There are also no further ancillary issues that need to be dealt with by the board in the present case.

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:



K. Boelicke

M. O. Müller

Decision electronically authenticated