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**Datasheet for the decision
of 11 December 2024**

Case Number: T 0509/23 - 3.3.04

Application Number: 17200764.3

Publication Number: 3335708

IPC: A61K31/19, A61K31/196,
A61P11/00, A61P25/20,
A61P43/00, A61K31/00,
A61K33/00, A61K31/20,
A61K31/33, A61K31/505,
A61K31/55, A61K31/616

Language of the proceedings: EN

Title of invention:

Administration of Gamma Hydroxybutyrate with Monocarboxylate Transporters

Patent Proprietor:

Jazz Pharmaceuticals Ireland Limited

Opponents:

Hoffmann Eitle Patent- und Rechtsanwälte
Partnerschaftsgesellschaft mbB
Zentiva, k.s.
Hexal AG
Ter Meer Steinmeister & Partner Patentanwälte mbB

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

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 0509/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 11 December 2024

Appellant I: Jazz Pharmaceuticals Ireland Limited
(Patent Proprietor) Waterloo Exchange,
Waterloo Road,
Dublin 4 (IE)

Representative: Carpmaels & Ransford LLP
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Appellant II: Hoffmann Eitle Patent- und Rechtsanwälte
(Opponent 1) Partnerschaftsgesellschaft mbB
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Representative: Hoffmann Eitle
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81925 München (DE)

Appellant III: Zentiva, k.s.
(Opponent 2) U kabelovny 130
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Representative: Greiner, Elisabeth
df-mp Dörries Frank-Molnia & Pohlman
Patentanwälte Rechtsanwälte PartG mbB
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Party as of right: Hexal AG
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Representative: Maiwald GmbH
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Party as of right: Ter Meer Steinmeister & Partner
(Opponent 4) Patentanwälte mbB
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80335 München (DE)

Representative: Ter Meer Steinmeister & Partner
Patentanwälte mbB
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 January 2023 concerning maintenance of the
European Patent No. 3 335 708 in amended form**

Composition of the Board:

Chairwoman M. Blasi
Members: S. Albrecht
A. Chakravarty

Summary of Facts and Submissions

- I. Appeals were duly lodged by the patent proprietor (appellant I), opponent 1 (appellant II) and opponent 2 (appellant III) against the opposition division's decision taken in relation to the patent in suit. The opposition division held that the ground for opposition under Article 100(b) EPC prejudiced the maintenance of the patent in suit, that the invention defined in the claims of auxiliary requests 1 and 2 was not sufficiently disclosed and that the patent as amended in the version of auxiliary request 3, and the invention to which it related, met the requirements of the EPC.
- II. With the reply to the other parties' appeals, appellant I requested that the decision under appeal be set aside and the patent be maintained as granted, implying that the oppositions be rejected, or alternatively, that the patent be maintained in amended version on the basis of one of the sets of claims of auxiliary requests 1 to 29.
- III. Appellants II and III requested that the decision under appeal be set aside and the patent be revoked. Opponents 3 and 4, parties as of right to these appeal proceedings, did not make any submissions.
- IV. In accordance with their requests, the parties were summoned to oral proceedings before the board.
- V. By letter dated 1 November 2024 appellant I withdrew its appeal and all requests on file, and stated that it no longer approved the text upon which the patent had been granted. It further informed the board that no

further text forming the basis of an amended version of the patent would be submitted.

VI. Oral proceedings were cancelled.

Reasons for the Decision

1. The appeals comply with Articles 106 to 108 EPC and Rule 99 EPC. They are admissible.
2. Pursuant to Article 113(2) EPC the EPO may decide upon a European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. As appellant I withdrew its approval of any text for the maintenance of the patent in suit, there is no text on the basis of which the board can consider compliance with the requirements of the EPC.
4. In such circumstances, in accordance with established case law, the appeal proceedings must be terminated by a decision ordering the revocation of the patent without going into the substantive issues (see also T 73/84, OJ EPO 1985, 241).
5. Furthermore, there are no other issues to decide upon within the scope of the appeal. As appellant II's and appellant III's requests for revocation of the patent can be allowed, the decision can be taken in written proceedings.
6. Moreover, as appellant I withdrew its appeal after a date for oral proceedings was set and within one month of notification of the board's communication pursuant to Article 15(1) RPBA, appellant I's appeal fee is to

be reimbursed at 50% in accordance with Rule 103(3) (a) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. Appellant I's appeal fee is reimbursed at 50%.

The Registrar:

The Chairwoman:



I. Aperribay

M. Blasi

Decision electronically authenticated