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**Datasheet for the decision
of 25 May 2011**

Case Number: T 0625/08 - 3.3.02

Application Number: 96920607.7

Publication Number: 0833643

IPC: A61K 31/66

Language of the proceedings: EN

Title of invention:

Anhydrous alendronate monosodium salt formulations and their use for the treatment of bone diseases

Patentee:

Merck Sharp & Dohme Corp.

Opponent:

Ranbaxy Laboratories Limited

Headword:

-

Relevant legal provisions:

EPC Art. 113(2)

Relevant legal provisions (EPC 1973):

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Keyword:

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Decisions cited:

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Catchword:

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Case Number: T 0625/08 - 3.3.02

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 25 May 2011

Appellant: Ranbaxy Laboratories Limited
(Opponent) 19, Nehru Place
New Delhi 110 019 (IN)

Representative: Cronin, Brian Harold John
CRONIN Intellectual Property
Chemin de Précossy 31
CH-1260 Nyon (CH)

Respondent: Merck Sharp & Dohme Corp.
(Patent Proprietor) 126 East Lincoln Avenue
Rahway, NJ 07065 (US)

Representative: Horgan, James Michael Frederic
Merck & Co., Inc.
European Patent Department
Hertford Road
Hoddesdon EN11 9BU (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 22 February 2008
rejecting the opposition filed against European
patent No. 0833643 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: U. Oswald
Members: M. C. Ortega Plaza
J.-P. Seitz

Summary of Facts and Submissions

I. European patent n° EP 833643 based on EP application n° 96920607.7 filed on 3 June 1996 was granted to Merck & Co., Inc. (NJ, USA). This corporate changed its name to Merck Sharp & Dohme Corp. (see letters dated 11 December 2009 and 26 January 2010).

II. Notice of opposition was filed on 15 November 2005 by Ranbaxy Laboratories Ltd. (GB).

By decision posted on 22 February 2008 and deemed notified on 3 March 2008, the opposition division maintained the patent in amended form.

III. On 29 March 2008 the opponent filed an appeal against said decision, paid the appeal fee on the same day. The corresponding statement setting out the grounds of appeal were filed on 30 June 2008.

The appellant requested that the impugned decision be set aside and the patent revoked.

IV. The respondent (patentee) filed on 14 November 2008 its reply to the grounds of appeal and requested that it be dismissed.

V. A communication accompanying the summons to the oral proceedings to be held on 29 June 2011 was sent to the parties pursuant to Article 15(1) RPBA on 30 March 2011.

VI. With letter dated 6 May 2011 the proprietor of the patent informed the Board of Appeal that it no longer approves the text of any of the requests on file and that it believed that this brings the appeal to a close and obviates the need for oral proceedings.

Reasons for the decision

1. Under 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. With its letter dated 6 May 2011 the proprietor of European patent n° 0833643 informed the present Board of Appeal that it no longer approves the text of any of its requests on file.

Under these circumstances the decision under appeal has to be set aside and the patent revoked.

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:

N. Maslin

U. Oswald