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**Datasheet for the decision
of 13 June 2012**

Case Number: T 2054/08 - 3.3.04

Application Number: 97929024.4

Publication Number: 914038

IPC: A01H 1/06, A01H 4/00

Language of the proceedings: EN

Title of invention:

Improved production of thebaine and oripavine

Applicant:

Tasmanian Alkaloids Pty. Ltd.

Opponents:

FRANCOPIA
Bawden & Associates

Headword:

Production of thebaine and oripavine/TASMANIAN ALKALOIDS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Withdrawal of the appeal (yes)"

Decisions cited:

T 0018/92, T 0481/96, T 1244/08

Catchword:

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Case Number: T 2054/08 - 3.3.04

D E C I S I O N
of the Technical Board of Appeal 3.3.04
of 13 June 2012

Appellant: Tasmanian Alkaloids Pty. Ltd.
(Patent Proprietor) 160 Birralee Road
Westbury, TAS 7303 (AU)

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Respondent I: FRANCOPIA
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Representative: Chajmowicz, Marion
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F-75002 Paris (FR)

Respondent II: Bawden & Associates
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Harpenden, Hertfordshire AL5 2TH (GB)

Representative: White, Nina Louise
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 26 August 2008
revoking European patent No. 914038 pursuant to
Article 101(3)(b) EPC.

Composition of the Board:

Chairman: C. Rennie-Smith
Members: R. Morawetz
R. Gramaglia

Summary of Facts and Submissions

- I. This is an appeal by the patent proprietor (hereinafter "appellant") against the decision of the opposition division of 26 August 2008 revoking the European patent No. 0 914 038.
- II. In the statement setting out the grounds of appeal the appellant requested that the decision of the opposition division be set aside and that the patent be maintained on the basis of the main request filed on 2 May 2008 or on the basis of auxiliary request 1 filed during oral proceedings before the opposition division on 6 May 2008.
- III. Opponent 1 (respondent I) and opponent 2 (respondent II) both filed responses to the statement of grounds of appeal and requested that the appeal be dismissed.
- IV. The board issued a summons to oral proceedings dated 2 February 2012 accompanied by a communication pursuant to Article 15(1) Rules of Procedure of the Boards of Appeal (RPBA).
- V. With its letter of 13 April 2012 the appellant replaced the requests on file with a new main request, and new auxiliary requests 1 and 2.
- VI. Oral proceedings took place on 13 June 2012. The appellant and respondent I were represented. Respondent II had informed the board that it would not attend. At the commencement of the oral proceedings the appellant and respondent I confirmed their requests on file.

VII. After the board had given the parties its view on the pending requests the appellant declared that it withdrew its agreement to the text of the patent as granted and to any amendments submitted during the proceedings and that it did not want to file any further requests.

Reasons for the Decision

1. The appeal is admissible.
2. According to established jurisprudence of the boards of appeal, the declaration of the appellant (see above section VII), as the proprietor of a patent that has been revoked by the opposition division, is to be interpreted as the withdrawal of the appeal (see inter alia decisions T 18/92 of 30 April 1993, T 481/96 of 16 September 1996, and T 1244/08 of 7 July 2011).

Order

For these reasons it is decided that:

1. The appeal proceedings are terminated. The patent remains revoked.

The Registrar:

The Chairman:

P. Cremona

C. Rennie-Smith