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**Datasheet for the decision  
of 14 July 2011**

**Case Number:** T 0055/10 - 3.3.02

**Application Number:** 02011928.5

**Publication Number:** 1264597

**IPC:** A61K 31/454

**Language of the proceedings:** EN

**Title of invention:**  
Compositions for treating cancer

**Patentee:**  
The Children's Medical Center Corporation

**Opponent:**  
IPC-Nordic A/S

**Headword:**

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**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 0055/10 - 3.3.02

**DECISION**  
**of the Technical Board of Appeal 3.3.02**  
**of 14 July 2011**

**Appellant:** IPC-Nordic A/S  
(Opponent) Halmtorvet 29  
DK-1700 Copenhagen V (DK)

**Representative:** Schouboe, Anne  
Plougmann & Vingtoft A/S  
Sundkrogsgade 9  
P.O. Box 831  
DK-2100 Copenhagen O (DK)

**Appellant:** The Children's Medical Center Corporation  
(Patent Proprietor) 300 Longwood Avenue  
Boston, Massachusetts 02115 (US)

**Representative:** Jump, Timothy John Simon  
Venner Shipley LLP  
20 Little Britain  
London EC1A 7DH (GB)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
9 November 2009 concerning maintenance of the  
European patent No. 1264597 in amended form.

**Composition of the Board:**

**Chairman:** U. Oswald  
**Members:** H. Kellner  
J.-P. Seitz

## Summary of Facts and Submissions

- I. European patent n° 1264597 was granted to the Children's Medical Center Corporation (US), mention of this grant being published on 14 September 2005.
- II. Notice of opposition was filed by IPC-Nordic A/S (DK) on 14 June 2006.
- III. By its decision posted on 9 November 2009 and deemed notified on 19 November 2009 the opposition division maintained the patent in amended form.
- IV. Both parties filed an appeal against said decision, the proprietor on 13 January 2010, the opponent on 18 January 2010. The corresponding statements of grounds were respectively filed on 19 and 18 March 2010.
- V. The proprietor requested that the impugned decision be set aside and that the patent be maintained on the basis of its main or auxiliary requests filed with the statement of grounds of appeal.  
  
The opponent requested that the impugned decision be set aside and the patent revoked.
- VI. With letter dated 20 April 2011 and received at the European Patent Office on the same day the proprietor withdrew its appeal and gave notice that it no longer approved the text in which the opposition division maintained the patent in amended form.

## **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. In the present case, the proprietor withdrew its appeal which implies that the requests filed in the course of the appeal proceedings, are no longer valid since sharing the fate of the appeal.

On the other hand the proprietor no longer agrees with the text of the patent as maintained by the opposition division.

3. Under these circumstances the decision under appeal must 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