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**Datasheet for the decision  
of 19 August 2014**

**Case Number:** T 0370/11 - 3.3.02

**Application Number:** 03796701.5

**Publication Number:** 1581223

**IPC:** A61K31/444, A61K31/454,  
A61P1/00, A61P9/00, A61P11/00,  
A61P15/00, A61P29/00,  
A61P31/00, A61P33/00,  
A61P37/00, A61P43/00

**Language of the proceedings:** EN

**Title of invention:**  
INHIBITION OF INFLAMATION USING ALPHA 7 RECEPTOR-BINDING  
CHOLINERGIC AGONISTS

**Patent Proprietor:**  
The Feinstein Institute for Medical Research

**Opponent:**  
AstraZeneca AB

**Headword:**

**Relevant legal provisions:**  
EPC Art. 108  
EPC R. 103(2), 101(1)

**Keyword:**

Reimbursement of appeal fee (partly) -  
withdrawal of patent proprietor's appeal  
Admissibility of opponent's appeal (no) -  
missing statement of grounds

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 0370/11 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 19 August 2014**

**Appellant:** The Feinstein Institute for Medical Research  
(Patent Proprietor) 350 Community Drive  
Manhasset, NY 11030 (US)

**Representative:** Bublak, Wolfgang  
Bardehle Pagenberg Partnerschaft mbB  
Patentanwälte, Rechtsanwälte  
Prinzregentenplatz 7  
81675 München (DE)

**Appellant:** AstraZeneca AB  
(Opponent) 151 85 Södertälje (SE)

**Representative:** Steinrud, Henrik  
AstraZeneca AB  
Global Intellectual Property  
151 85 Södertälje (SE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
28 December 2010 concerning maintenance of the  
European Patent No. 1581223 in amended form.**

**Composition of the Board:**

**Chairman** U. Oswald  
**Members:** M.C. Ortega Plaza  
R. Cramer

## **Summary of Facts and Submissions**

- I. The opposition division decided to maintain the European Patent No. 1 581 223 in amended form on the basis of auxiliary request I filed at the oral proceedings before the opposition division. The interlocutory decision was sent to the parties on 28 December 2010.
- II. On 17 February 2011 the opponent filed a notice of appeal. The fee for appeal was received on 18 February 2011.
- III. On 24 February 2011 the patent proprietor also filed a notice of appeal, and paid the appeal fee on the same date. The patent proprietor's statement of grounds of appeal was received on 5 May 2011.
- IV. As no statement of grounds of appeal on behalf of the opponent was received by the end of the time limit in Article 108, third sentence, EPC, the opponent was informed by communication of the registrar of the board sent as registered letter on 31 May 2011 that no statement of grounds had been filed, and that it was to be expected that its appeal would be rejected as inadmissible. The opponent's acknowledgement of receipt of said communication was received by the EPO on 16 June 2011. However, the opponent did not file any reply to the communication.
- V. A summons to oral proceedings before the board to be held on 1 December 2014, accompanied by a communication pursuant to Article 15(1) RPBA, was sent to the parties on 20 June 2014.

VI. With its letter dated 23 July 2014 the patent proprietor withdrew its appeal and requested reimbursement of 50% of the appeal fee pursuant to Rule 103(2) (a) EPC.

### **Reasons for the Decision**

1. The appeal filed by the patent proprietor is admissible.

As the patent proprietor's appeal has been withdrawn more than four weeks before the date set for oral proceedings, 50% of the appeal fee is to be reimbursed (Article 103(2) (a) EPC). Although Rule 103(2) EPC does not specify on what basis the 50% is to be calculated, the board is of the view that the provision can only mean that the 50% is to be calculated on the basis of the appeal fee actually paid by the appellant-patent proprietor, and not on the basis of the rate of the appeal fee applicable on the date of withdrawal or reimbursement.

2. As no statement of grounds of appeal has been filed by the opponent, its appeal has to be rejected as inadmissible pursuant to Rule 101(1) EPC in conjunction with Article 108 EPC.

### **Order**

#### **For these reasons it is decided that:**

1. 50% of the appeal fee paid by the patent proprietor is to be reimbursed.

2. The appeal filed by the opponent is rejected as inadmissible.

The Registrar:

The Chairman:



S. Sánchez Chiquero

U. Oswald

Decision electronically authenticated