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**Datasheet for the decision
of 8 September 2017**

Case Number: T 2080/13 - 3.3.08

Application Number: 06011535.9

Publication Number: 1721979

IPC: C12N15/12

Language of the proceedings: EN

Title of invention:

Compositions and methods for increasing bone mineralisation

Patent Proprietor:

UCB Pharma S.A.

Opponents:

Mereo Biopharma 3 Limited
Eli Lilly and Company
Laudens

Headword:

Bone mineralisation/UCB PHARMA

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - revocation of the patent at request of the patent proprietor

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 2080/13 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 8 September 2017

Appellant I: UCB Pharma S.A.
(Patent Proprietor) Allée de la Recherche 60
1070 Bruxelles (BE)

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Appellant II: Mereo Biopharma 3 Limited
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Representative: Marshall, Cameron John
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Appellant III: Eli Lilly and Company
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Representative: Kent, Lindsey Ruth
Eli Lilly and Company Limited
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Party as of right: Laudens
(Opponent 3) Blackwell House
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 August 2013 concerning maintenance of the
European Patent No. 1721979 in amended form.**

Composition of the Board:

Chairwoman M. R. Vega Laso
Members: B. Stolz
D. Rogers

Summary of Facts and Submissions

- I. The patent proprietor (appellant I), opponent 1 (appellant II) and opponent 2 (appellant III) filed an appeal against the interlocutory decision of an opposition division dated 2 August 2013, whereby European patent No. 1721979 was maintained in amended form.
- II. With its statement of grounds of appeal, appellant I filed nine new sets of claims as its main request and auxiliary requests 1 to 8. Later on, auxiliary requests 1 to 8 were replaced by auxiliary requests 1 to 20.
- III. Appellants II and III requested that the decision under appeal be set aside and the patent revoked.
- IV. The parties were summoned to oral proceedings to be held on 6 October 2017. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) annexed to the summons, the board informed the parties of its provisional, non-binding opinion on some of the issues of the appeal proceedings.
- V. By letter dated 5 September 2017, appellant I informed the board that it no longer approved the text of the patent as granted or as amended by way of any of the claim requests on file. Appellant I also stated that it would not be filing any further claim requests and requested revocation of the patent in accordance with Article 113(2) EPC.
- VI. Oral proceedings were cancelled.

Reasons for the Decision

1. According to Article 113(2) EPC, the European Patent Office may decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Agreement cannot be held to be given if the patent proprietor expressly states that it no longer approves the text of the patent as granted or as amended by way of any of the claim requests on file and that it will not be filing any further claim requests (cf. point V above).
3. There is therefore no text of the patent on the basis of which the board can consider the appeal. It is established case law that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see decision T 73/84, OJ EPO, 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition, 2016, IV.C.5.2, page 979).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



A. Wolinski

M. R. Vega Laso

Decision electronically authenticated