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**Datasheet for the decision
of 5 April 2017**

Case Number: T 0197/14 - 3.3.07

Application Number: 04771825.9

Publication Number: 1673058

IPC: A61K8/18, A61P17/14, A61K31/22,
A61K31/357, C07D317/30,
C07D319/06

Language of the proceedings: EN

Title of invention:
COMPOSITION AND METHOD FOR PROMOTING HAIR GROWTH

Patent Proprietor:
R-Tech Ueno, Ltd.

Opponent:
ALLERGAN, INC.

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, T 1851/09



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Chambres de recours

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Case Number: T 0197/14 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 5 April 2017

Appellant: ALLERGAN, INC.
(Opponent) 2525 Dupont Drive
Irvine CA 92612 (US)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
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81925 München (DE)

Respondent: R-Tech Ueno, Ltd.
(Patent Proprietor) 1-7, Uchisaiwai-cho 1-chome,
Chiyoda-ku,
Tokyo-to, (JP)

Representative: Beckmann, Claus
Kraus & Weisert
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 November 2013 concerning maintenance of the
European Patent No. 1673058 in amended form.

Composition of the Board:

Chairman J. Riolo
Members: A. Usuelli
I. Beckedorf

Summary of Facts and Submissions

- I. European Patent 1 673 058 was opposed on the grounds that its subject-matter lacked inventive step and it extended beyond the content of the application as filed. By an interlocutory decision posted on 29 November 2013, the opposition division maintained the patent in amended form.
- II. The opponent (appellant) lodged an appeal against that decision and filed the statement setting out the grounds of appeal on 9 April 2014. The patent proprietor (respondent) replied to the appeal with letter of 31 July 2014. Both parties made a request for oral proceedings.
- III. By letter of 31 March 2017, the respondent requested the revocation of the opposed patent and withdrew its request for oral proceedings.

Reasons for the Decision

1. The respondent's request for revocation of the patent indicates that it withdraws its agreement to the text of the patent as granted as well as to the text in which the patent was maintained in amended form according to the decision under appeal and that it does not intend to submit any other text for the maintenance of the patent.
2. Article 113(2) EPC, however, stipulates that the EPO may decide upon a European patent only in the text submitted to it, or agreed by the patentee. This substantive requirement for maintaining the contested patent is not fulfilled in the present case and therefore the proceedings are to be terminated by a

decision ordering revocation, without going into the substantive issues (see e.g. decisions T 73/84, OJ EPO 1985, 241 and T 1851/09 of 9 October 2012 not published in OJ EPO).

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



S. Fabiani

J. Riolo

Decision electronically authenticated