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**Datasheet for the decision
of 7 October 2018**

Case Number: T 0263/14 - 3.3.01

Application Number: 05749635.8

Publication Number: 1755590

IPC: A61K31/402, A61K31/4704,
A61K31/428, A61P11/00

Language of the proceedings: EN

Title of invention:

COMBINATIONS OF GLYCOPYRROLATE AND BETA2 ADRENOCEPTOR AGONISTS

Patent Proprietor:

Novartis AG
Novartis Pharma GmbH

Opponent:

Teva UK Limited

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text submitted or agreed by patent
proprietors (no)

Decisions cited:

T 0073/84, T 0186/84, T 0655/01, T 1526/06, T 1655/07,
T 0969/10, T 2405/12



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0263/14 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 7 October 2018

Appellant: Novartis AG
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4056 Basel (CH)

Appellant: Novartis Pharma GmbH
(Patent Proprietor 2) Brunner Strasse 59
1230 Wien (AT)

Representative: Carpmaels & Ransford LLP
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Appellant: Teva UK Limited
(Opponent) Ridings Point
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Representative: Gillard, Richard Edward
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
4 December 2013 concerning maintenance of the
European Patent No. 1755590 in amended form.

Composition of the Board:

Chairman A. Lindner
Members: R. Hauss
 L. Bühler

Summary of Facts and Submissions

- I. An opposition was filed against European patent No. 1 755 590.
- II. The patent proprietors requested the rejection of the opposition (main request) and submitted one auxiliary request consisting of amended claims and description pages.
- III. The decision under appeal is the interlocutory decision of the opposition division, announced on 25 October 2013 and posted on 4 December 2013, rejecting the patent proprietors' main request and finding that the patent as amended in the form of the auxiliary request met the requirements of the EPC.
- IV. The opponent filed an appeal against that decision, requesting that the decision be set aside and the patent be revoked. The patent proprietors also filed an appeal against the rejection of their main request.
- V. The board issued a summons to oral proceedings scheduled for 22 November 2018, followed by a communication pursuant to Article 15(1) RPBA.
- VI. By letter dated 31 October 2018, the appellants-patent proprietors stated that they withdrew their approval of the text in which European patent No. 1 755 590 had been granted, that a replacement text would not be filed and that all their requests pending in the appeal proceedings were withdrawn, including the request for oral proceedings.

They anticipated that, in the absence of a text agreed by the patent proprietors, the opposition appeal

proceedings must be terminated by a decision ordering the revocation of the patent.

VII. The board subsequently cancelled the oral proceedings.

Reasons for the Decision

1. By withdrawing all pending requests, the appellants-patent proprietors have effectively withdrawn their appeal.
2. In addition, by disapproving the granted text of the patent, stating that a replacement text will not be filed and withdrawing all pending requests, they have withdrawn their approval of any text for maintenance of the patent.
3. Under Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings.
4. There is therefore no valid text of the patent on the basis of which the board can consider the appeal of the appellant-opponent.
5. Since the text of the patent is at the disposition of the patent proprietors, the patent cannot be maintained against the patent proprietors' will.
6. It follows from points 1 and 4 above that the appeal proceedings must be terminated.

7. In the circumstances described above, it is established case law that the appeal proceedings must be terminated by a decision ordering revocation of the patent, since in the absence of a valid text an essential requirement for maintaining the patent is lacking (see, for instance, T 0073/84, OJ EPO 1985, 241; T 0186/84, OJ EPO 1986, 79; T 0655/01 of 11 November 2005; T 1526/06 of 11 July 2008; T 1655/07 of 10 June 2009; T 0969/10 of 26 September 2011; T 2405/12 of 11 May 2016).

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:



M. Schalow

A. Lindner

Decision electronically authenticated