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Datasheet for the decision of 10 October 2017

Case Number: T 1092/14 - 3.3.04

Application Number: 08707777.2

Publication Number: 2124640

IPC: A61K38/44, A61K38/52, A23L1/03, A23L1/30, A61K9/48, A61P1/00, A61P3/00

Language of the proceedings: EN

Title of invention:
Glucose isomerase for use in the treatment of fructose intolerance

Patent Proprietor:
Vitacare GmbH & Co. KG

Opponent:
Sciotec Diagnostic Technologies GmbH

Headword:
Glucose isomerase/VITACARE

Relevant legal provisions:
EPC Art. 113(2)

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It can be changed at any time and without notice.

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor

Decisions cited:
T 0073/84

Catchword:

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Case Number: T 1092/14 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 10 October 2017

Appellant: (Opponent)	Sciotec Diagnostic Technologies GmbH Ziegelfeldstrasse 3 3430 Tulln (AT)
Representative:	Lederer & Keller Patentanwälte Partnerschaft mbB Unsöldstrasse 2 80538 München (DE)
Respondent: (Patent Proprietor)	Vitacare GmbH & Co. KG Konrad-Adenauer-Allee 8-10 61118 Bad Vilbel (DE)
Representative:	Schlich 9 St Catherine's Road Littlehampton, West Sussex BN17 5HS (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 12 March 2014 concerning maintenance of the European Patent No. 2124640 in amended form.**

Composition of the Board:

Chairman	B. Claes
Members:	R. Morawetz
	P. de Heij

Summary of Facts and Submissions

I. An appeal was lodged by the opponent (hereinafter "the appellant") against the decision of the opposition division maintaining European patent No. 2124640 in amended form. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

II. With its reply to the statement of grounds of appeal the patent proprietor (hereinafter "the respondent") made the documents on the basis of which the patent was maintained by the opposition division its main request and submitted auxiliary requests 1 to 16.

III. The parties were summoned to oral proceedings.

IV. At the beginning of the oral proceedings held on 10 October 2017, the respondent requested that the appeal be dismissed and that the patent be upheld in the form maintained by the opposition division (main request) or, alternatively, on the basis of any of auxiliary requests 1 to 16 filed with the response to the grounds of appeal. The appellant maintained its request that the decision under appeal be set aside and that the patent be revoked.

V. In the course of the oral proceedings, the respondent declared that it no longer approved the text of the patent as granted and that it withdrew all pending claim requests.

VI. At the end of the oral proceedings, the chairman announced the board's decision.

Reasons for the Decision

1. Pursuant 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. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and withdraws all pending claim requests (see section V).

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 Chairman:

L. Malécot-Grob B. Claes

Decision electronically authenticated