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**Datasheet for the decision
of 14 October 2015**

Case Number: T 1536/14 - 3.3.04
Application Number: 10150124.5
Publication Number: 2177528
IPC: C07K1/00, C07K1/14, C07K14/00,
C08G69/10
Language of the proceedings: EN

Title of invention:

Process for the preparation of mixtures of trifluoroacetyl
glatiramer acetate using purified hydrobromic acid

Patent Proprietor:

Teva Pharmaceutical Industries Ltd.

Opponents:

Mylan
Synthon BV
Henkel, Breuer & Partner

Headword:

Glatiramer acetate II/TEVA

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of the 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 1536/14 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 14 October 2015

Appellant:
(Opponent 1)

Mylan
Albany Gate
Darkes Lane
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Appellant:
(Opponent 2)

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Representative:

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20354 Hamburg (DE)

Appellant:
(Opponent 3)

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80636 München (DE)

Representative:

Breuer, Markus
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Respondent:
(Patent Proprietor)

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Representative:

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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 July 2014 concerning maintenance of the
European Patent No. 2177528 in amended form.

Composition of the Board:

Chairwoman G. Alt
Members: R. Morawetz
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. Opponents 1, 2 and 3 ("appellants I, II and III", respectively) have lodged appeals against the decision of the opposition division maintaining European patent No. EP 2 177 528 in amended form.
- II. The opposition division held that the main request before it, corresponding to claims 1 to 12 as granted, fulfilled the requirements of the EPC.
- III. The board issued a summons to oral proceedings and informed the parties of the board's preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- IV. Oral proceedings before the board took place on 13 and 14 October 2015.

At the oral proceedings, all appellants requested that the decision under appeal be set aside and that the patent be revoked.

At the beginning of the oral proceedings, the patent proprietor ("respondent") requested that the appeals be dismissed, or alternatively, that the patent be upheld in the form maintained by the opposition division (main request) or alternatively on the basis of any of the auxiliary requests filed with the response to the grounds of appeal.

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

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and 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 proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and withdraws all pending requests (see section IV, 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, 7th edition 2013, IV.C.5.2).
4. The board has no reason in the present case to deviate from the consistent approach of the Boards of Appeal.

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:



P. Cremona

G. Alt

Decision electronically authenticated