

**Internal distribution code:**

- (A) [ - ] Publication in OJ  
(B) [ - ] To Chairmen and Members  
(C) [ - ] To Chairmen  
(D) [ X ] No distribution

**Datasheet for the decision  
of 13 January 2021**

**Case Number:** T 1428/16 - 3.3.01

**Application Number:** 02782404.4

**Publication Number:** 1453521

**IPC:** A61K31/56, A61K31/567,  
A61K31/57, A61K31/138,  
A61P15/18, A61P25/24,  
A61K31/565, A61K45/06

**Language of the proceedings:** EN

**Title of invention:**

ORAL CONTRACEPTIVES TO PREVENT PREGNANCY AND DIMINISH  
PREMENSTRUAL SYMPTOMATOLOGY

**Patent Proprietor:**

Theramex HQ UK Limited

**Opponents:**

Bröcher, Dirk Joachim  
Laboratorios León Farma, S.A.

**Relevant legal provisions:**

EPC Art. 113(2)  
EPC R. 103(4)(a)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked  
Reimbursement of appeal fee - withdrawal of appeal

**Decisions cited:**

T 0073/84



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

**Case Number: T 1428/16 - 3.3.01**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.01**  
**of 13 January 2021**

**Appellant:**  
(Patent Proprietor)

Theramex HQ UK Limited  
Sloane Square House  
1 Holbein Place  
Belgravia  
London SW1W 8NS (GB)

**Representative:**

Oates, Edward Christopher  
Carpmaels & Ransford LLP  
One Southampton Row  
London WC1B 5HA (GB)

**Appellant:**  
(Opponent 1)

Bröcher, Dirk Joachim  
Roswithastraße 11  
45131 Essen (DE)

**Representative:**

Gille Hrabal  
Brucknerstrasse 20  
40593 Düsseldorf (DE)

**Appellant:**  
(Opponent 2)

Laboratorios León Farma, S.A.  
C/La Vallina s/n.  
Pol. Ind. Navatejera  
Leon  
24008 Villaquilambre (ES)

**Representative:**

Schön, Christoph  
Dr. Schön, Neymeyr & Partner mbB  
Bavariaring 26  
80336 München (DE)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
12 April 2016 concerning maintenance of the  
European Patent No. 1453521 in amended form.**

**Composition of the Board:**

**Chairman**           A. Lindner  
**Members:**         M. Pregetter  
                      M. Blasi

## **Summary of Facts and Submissions**

- I. The appeals by the patent proprietor and both opponents lie against the interlocutory decision of the opposition division concerning maintenance of European patent no. 1 453 521 in amended form.
- II. The appellant-patent proprietor requested that the decision under appeal be set aside and the patent be maintained in amended form based on one of the sets of claims of the main request, or alternatively, of any of auxiliary requests 1 to 11, of main request a, or of auxiliary requests 1a to 11a. As a further auxiliary request it requested oral proceedings to be held.

The appellant-opponents requested that the decision under appeal be set aside and the patent be revoked. As an auxiliary request they requested oral proceedings to be held.

Summons for oral proceedings before the board and a communication pursuant to Article 15(1) RPBA were issued on 27 March 2020.

- III. In a letter dated 2 December 2020, the appellant-patent proprietor stated that it withdrew its approval of the text of European patent 1 453 521 and indicated that it would not be submitting an amended text. It also withdrew its appeal and all outstanding requests, including its request for oral proceedings, the main request and all auxiliary requests and stated that it would not be attending the oral proceedings. Furthermore, it requested a refund of 25% of the appeal fee in accordance with Rule 103(4) (a) EPC.

IV. The oral proceedings were subsequently cancelled.

### **Reasons for the Decision**

1. The appeals are admissible.
2. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
  - 2.1 Since the appellant-patent proprietor withdrew the approval of the text in which the patent was granted and held allowable by the opposition division and confirmed that it would not be submitting an amended text, there is no text of the patent on the basis of which the board can consider compliance with the requirements of the EPC.
  - 2.2 Accordingly, in line with established case law of the boards of appeal based on inter alia decision T 73/84 (OJ EPO 1985, 241), the patent is to be revoked. There are also no remaining issues that would have to be dealt with by the board in the present appeal case.
3. Revocation of the patent complies with the requests of all parties and the present decision can therefore be taken without holding oral proceedings.
4. The appellant-patent proprietor withdrew its appeal after a date for oral proceedings has been set and later than one month of notification of a communication issued by the board in preparation for these oral proceedings, but before a decision was issued. In

accordance with Rule 103(4) (a) EPC 25% of the appeal fee paid by the appellant-patent proprietor are to be reimbursed.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The appeal fee paid by the appellant-patent proprietor is reimbursed at 25%.

The Registrar:

The Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated