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**Datasheet for the decision
of 7 February 2022**

Case Number: T 1475/16 - 3.3.02

Application Number: 03761744.6

Publication Number: 1523489

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C07H19/23, A61K31/7056,
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A61P31/14

Language of the proceedings: EN

Title of invention:

MODIFIED 2' AND 3' -NUCLEOSIDE PRODUKS FOR TREATING FLAVIRIDAE
INFECTIONS

Patent Proprietor:

Idenix Pharmaceuticals LLC
CENTRE NATIONAL DE
LA RECHERCHE SCIENTIFIQUE -CNRS-
UNIVERSITA' DEGLI STUDI DI CAGLIARI
Université de Montpellier
Idenix SARL

Opponents:

Gilead Sciences, Inc.
Wiegeleben, Peter
F.Hoffmann-La Roche AG
Strawman Limited
Wächtershäuser & Hartz
Patentanwaltspartnerschaft mbB

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 1021/15

Catchword:



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 1475/16 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 7 February 2022

Appellant: Idenix Pharmaceuticals LLC
(Patent Proprietor 1) 320 Bent Street, Floor 4
Cambridge, MA 02141 (US)

Appellant: CENTRE NATIONAL DE
(Patent Proprietor 2) LA RECHERCHE SCIENTIFIQUE -CNRS-
3, rue Michel-Ange
75794 Paris Cedex 16 (FR)

Appellant: UNIVERSITA' DEGLI STUDI DI CAGLIARI
(Patent Proprietor 3) via Università 40
09124 Cagliari (IT)

Appellant: Université de Montpellier
(Patent Proprietor 4) 163 rue Auguste Broussonnet
34090 Montpellier (FR)

Appellant: Idenix SARL
(Patent Proprietor 5) 1682 rue de la Valsiere
BP 50001
34189 Montpellier Cedex 4 (FR)

Representative: Jones Day
Rechtsanwälte, Attorneys-at-Law, Patentanwälte
Prinzregentenstrasse 11
80538 München (DE)

Respondent: Gilead Sciences, Inc.
(Opponent 1) 333 Lakeside Drive
Foster City CA 94404 (US)

Representative: J A Kemp LLP
80 Turnmill Street
London EC1M 5QU (GB)

Respondent: Wiegeleben, Peter
(Opponent 2) Rugenbarg 33N
22549 Hamburg (DE)

Representative: Eisenführ Speiser
Patentanwälte Rechtsanwälte PartGmbH
Johannes-Brahms-Platz 1
20355 Hamburg (DE)

Respondent: F.Hoffmann-La Roche AG
(Opponent 3) Grenzacherstrasse 124
4070 Basel (CH)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Respondent: Strawman Limited
(Opponent 4) Orchard Lea
Horns Lane
Combe, Witney
Oxfordshire OX29 8NH (GB)

Representative: D Young & Co LLP
120 Holborn
London EC1N 2DY (GB)

Respondent: Wächtershäuser & Hartz
(Opponent 5) Patentanwaltspartnerschaft mbB
Weinstrasse 8
80333 München (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 18 April 2016 revoking European patent No. 1523489 pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: P. O'Sullivan
L. Basterreix
A. Lenzen
L. Bühler

Summary of Facts and Submissions

- I. The appeal of the patent proprietors (hereinafter appellants) lies from the decision of the opposition division according to which European patent 1 523 489 was revoked.
- II. The parties were summoned to oral proceedings, to be held by videoconference on 7 February 2022.
- III. At the outset of oral proceedings, the appellants *inter alia* requested that the decision under appeal be reversed and set aside, and that the case be remitted to the opposition division for further prosecution on the basis of the main request (patent as granted), or, alternatively, of one of the sets of claims of the first to tenth auxiliary requests filed on 15 December 2015.
- IV. The respondents (opponents) 1, 2, 4 and 5 *inter alia* requested that the appeal be dismissed.
- V. During oral proceedings, the appellants withdrew their consent and agreement under Article 113(2) EPC to the text of the patent as granted and withdrew all auxiliary requests on file.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. Since the appellants withdrew their consent and agreement under Article 113(2) EPC to the text of the patent and withdrew all auxiliary requests on file, there is no text of the patent submitted or agreed by the proprietors of the patent, on the basis of which the board can consider compliance with the requirements of the EPC and the allowability of the appeal.

3. In such a situation, where the appeal of the patent proprietor against a decision of the opposition division to revoke the patent lacks basis for a review of the appealed decision as to the substance, the proceedings should be terminated without addressing substantive issues (T 1021/15, reasons 2). Consequently, the opposition division's revocation of the patent becomes final. There are also no ancillary issues that would have to be dealt with by the board in the present case. Therefore, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated