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**Datasheet for the decision  
of 23 November 2021**

**Case Number:** T 1884/16 - 3.3.01

**Application Number:** 06023696.5

**Publication Number:** 1769795

**IPC:** A61K31/44, A61K31/535,  
A61K31/65, A61K31/435,  
A61K31/505, A61K31/47

**Language of the proceedings:** EN

**Title of invention:**

Aryl urea compounds in combination with other cytostatic or  
cytotoxic agents for treating human cancers

**Patent Proprietor:**

Bayer HealthCare LLC

**Opponent:**

Altmann, Andreas

**Headword:**

Sorafenib in combination with other cytostatic or cytotoxic  
agents/BAYER

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0186/84, T 0073/84



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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European Patent Office  
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Case Number: T 1884/16 - 3.3.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.01**  
**of 23 November 2021**

**Appellant:** Altmann, Andreas  
(Opponent) Herzog Fiesser & Partner  
Patentanwälte  
Isartorplatz 1  
80331 München (DE)

**Representative:** Elkington and Fife LLP  
Prospect House  
8 Pembroke Road  
Sevenoaks, Kent TN13 1XR (GB)

**Respondent:** Bayer HealthCare LLC  
(Patent Proprietor) 100 Bayer Boulevard  
Whippany, NJ 07981 (US)

**Representative:** Weickmann & Weickmann PartmbB  
Postfach 860 820  
81635 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 7 June 2016  
rejecting the opposition filed against European  
patent No. 1769795 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairwoman** T. Sommerfeld  
**Members:** M. Pregetter  
F. Bostedt

## **Summary of Facts and Submissions**

- I. The opposition division rejected the opposition against European patent No. 1 769 795.
- II. The opponent (appellant) lodged an appeal against this decision. It requested that the decision under appeal be set aside and the patent be revoked.
- III. The patent proprietor (respondent) requested that the appeal be dismissed. Its main request was that the patent be maintained as granted. Alternatively, a patent was to be maintained in amended form on the basis of the sets of claims of any of auxiliary requests I to VII, all submitted with the reply to the statement setting out the grounds of appeal.
- IV. With its letter of 18 November 2021 the respondent informed the board that it no longer approved the text of the granted patent, that all requests filed so far were withdrawn, that no amended text would be submitted, and that, therefore, revocation of the patent was expected.

## **Reasons for the Decision**

1. The appeal is admissible.
2. The respondent withdrew its agreement to the text of the granted patent, withdrew any requests filed so far and confirmed that it did not intend to submit any other text for the maintenance of the patent.

Article 113(2) EPC stipulates that the EPO may decide upon a European patent only in the text submitted to

it, or agreed to by the patent proprietor. However, this substantive requirement for maintaining the contested patent is not fulfilled in the present case. There is therefore no text of the patent on the basis of which the Board can consider the appeal of the appellant (see T 73/84, OJ EPO, 1985, 241, reasons point 2).

3. The patent is therefore to be revoked, without going into the substantive issues (see T 186/84, OJ EPO 1986, 79, reasons point 5).

## 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:



M. Schalow

T. Sommerfeld

Decision electronically authenticated