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**Datasheet for the decision
of 29 June 2021**

Case Number: T 2226/17 - 3.2.02

Application Number: 10178947.7

Publication Number: 2266650

IPC: A61M15/00

Language of the proceedings: EN

Title of invention:
Medicament dispenser

Patent Proprietor:
Glaxo Group Limited

Opponent:
Teva UK Limited

Headword:

Relevant legal provisions:
EPC Art. 101, 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84, T 2405/12, T 0055/16

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 2226/17 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 29 June 2021

Appellant: Teva UK Limited
(Opponent) Ridings Point
Whistler Drive
Castleford WF10 5HX (GB)

Representative: Smith, Jeremy Robert
Kilburn & Strode LLP
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84 Theobalds Road
London WC1X 8NL (GB)

Respondent: Glaxo Group Limited
(Patent Proprietor) 980 Great West Road
Brentford, Middlesex TW8 9GS (GB)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 4 August 2017 rejecting the opposition filed against European patent No. 2266650 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman M. Stern
Members: S. Böttcher
N. Obrovski

Summary of Facts and Submissions

I. This decision concerns the appeal filed by the opponent against the decision of the opposition division rejecting the opposition against European patent No. 2 266 650.

II. The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

III. By letter dated 28 June 2021 the respondent (patent proprietor) declared:

"The Proprietor hereby withdraws its approval of the text in which the European Patent was granted. The Proprietor also withdraws all auxiliary requests and will not be filing a replacement text or any further requests."

IV. Oral proceedings took place on 29 June 2021.

Nobody was present for the parties. The appellant had declared in their submission dated 24 June 2021 that they would not attend the oral proceedings. The proceedings were continued without the parties (Rule 115(2) EPC and Article 15(3) RPBA 2020).

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.

Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly states that they no longer approve the text of the patent as granted, withdraw all submitted auxiliary requests, and declare that they will not be submitting an amended text or further requests.

Where there is no text of the patent on which basis the Board can consider the case of the patent proprietor, the only possibility available to the Board is to revoke the patent as envisaged by Article 101 EPC. In this context reference is made to T 73/84 (OJ EPO 1985, 241) as well as to T 2405/12 and T 55/16 (see also Case Law of the Boards of Appeal, 9th Edition 2019, III.B.3.3).

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:



D. Hampe

M. Stern

Decision electronically authenticated