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**Datasheet for the decision  
of 27 July 2020**

**Case Number:** T 0201/18 - 3.3.01

**Application Number:** 09704256.8

**Publication Number:** 2237783

**IPC:** A61K31/506, A61P35/00

**Language of the proceedings:** EN

**Title of invention:**

METHOD OF OPTIMIZING THE TREATMENT OF PROLIFERATIVE DISEASES  
MEDIATED BY THE TYROSINE KINASE RECEPTOR KIT WITH IMATINIB

**Patent Proprietor:**

Novartis AG

**Opponent:**

Generics [UK] Limited (trading as Mylan)

**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Basis of decision - text or agreement to text withdrawn by  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 0073/84



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0201/18 - 3.3.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.01**  
**of 27 July 2020**

**Appellant:** Generics [UK] Limited (trading as Mylan)  
(Opponent) Building 4  
Trident Place  
Mosquito Way  
Hatfield  
Hertfordshire AL10 9UL (GB)

**Representative:** FRKelly  
27 Clyde Road  
Dublin D04 F838 (IE)

**Respondent:** Novartis AG  
(Patent Proprietor) Lichtstrasse 35  
4056 Basel (CH)

**Representative:** Warner, James Alexander  
Carpmaels & Ransford LLP  
One Southampton Row  
London WC1B 5HA (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on  
22 November 2017 rejecting the opposition filed  
against European patent No. 2237783 pursuant to  
Article 101(2) EPC.**

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

- I. The appeal lies against the opposition division's decision rejecting the opposition against European patent EP 2 237 783.
- II. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked. As an auxiliary request it requested oral proceedings to be held.

The respondent (patent proprietor) requested that the appeal be dismissed.

Summons for oral proceedings before the board were issued, accompanied by a communication pursuant to Article 15(1) RPBA.

- III. In a letter dated 2 July 2020, the respondent stated that it withdrew its approval under Rule 71 EPC of the text in which European Patent 2 237 783 had been granted. It indicated that it would not be filing a replacement text or any further requests and would not be represented at the oral proceedings.
- IV. The oral proceedings were subsequently cancelled.

## **Reasons for the Decision**

1. The opponent's appeal is 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 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 both parties and the present decision can therefore be taken without holding oral proceedings.

## 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:



M. Schalow

A. Lindner

Decision electronically authenticated