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**Datasheet for the decision
of 2 August 2022**

Case Number: T 0984/18 - 3.3.04

Application Number: 11742896.1

Publication Number: 2533634

IPC: A61K31/275, A61K38/16,
A61K38/21, A61K31/225,
A61P25/00

Language of the proceedings: EN

Title of invention:

NEUROPROTECTION IN DEMYELINATING DISEASES

Patent Proprietor:

Biogen MA Inc.

Opponents:

Generics (U.K.) Limited (trading as Mylan)
Hexal AG

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0984/18 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 2 August 2022

Appellant: Generics (U.K.) Limited (trading as Mylan)
(Opponent 1) Albany Gate
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Hertfordshire EN6 1AG (GB)

Representative: Gill Jennings & Every LLP
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Appellant: Hexal AG
(Opponent 2) Industriestrasse 25
83607 Holzkirchen (DE)

Representative: Lederer & Keller Patentanwälte
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Respondent: Biogen MA Inc.
(Patent Proprietor) 225 Binney Street
Cambridge, MA 02142 (US)

Representative: Pohlman, Sandra M.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 February 2018 concerning maintenance of the
European Patent No. 2533634 in amended form.**

Composition of the Board:

Chairwoman M. Pregetter
Members: R. Hauss
 P. de Heij

Summary of Facts and Submissions

- I. This case concerns an opposition appeal.
- II. The decision under appeal is the opposition division's interlocutory decision, announced on 18 January 2018 and posted on 27 February 2018, which found that European patent EP 2 533 634 (patent in suit), as amended according to the main request filed in the oral proceedings of 18 January 2018, met the requirements of the EPC.
- III. Opponent 1 and opponent 2 (appellants) both filed an appeal against this decision, requesting that it be set aside and that the patent in suit be revoked.
- IV. The patent proprietor (respondent) requested that the appeals be dismissed and that the patent in suit be maintained on the basis of the main request held allowable by the opposition division.
- V. In addition to its main request, the respondent also re-filed former auxiliary claim requests 1 and 2 with its reply to the appellants' grounds of appeal, but it did not formulate an explicit request based on these claim sets.
- VI. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- VII. By letter dated 18 July 2022, the respondent stated, under the heading "Withdrawal of the Patent", that it was withdrawing its approval of the text of the patent

and that it expected the oral proceedings to be cancelled.

VIII. The board subsequently cancelled the oral proceedings.

Reasons for the Decision

1. The appeals comply with Articles 106 to 108 EPC and Rule 99 EPC; they are admissible.
2. Article 113(2) EPC requires that the EPO may decide upon a European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. In its letter of 18 July 2022, the respondent refers only in general terms to its approval of the text "of the [...] patent", without mentioning specific claim requests. However, the heading "Withdrawal of the Patent" leaves no doubt that the withdrawal of approval of any version was intended.
4. As a consequence, there is no valid text on the basis of which the board can consider the appeals.
5. In the circumstances described above, it is established case law that the appeal proceedings must be terminated by a decision ordering the revocation of the patent without going into the substantive issues (see, for instance, T 0073/84, OJ EPO 1985, 241; T 0507/00; T 0655/01; T 1655/07; and T 0545/10).

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:



A. Chavinier-Tomsic

M. Pregetter

Decision electronically authenticated