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**Datasheet for the decision
of 11 February 2022**

Case Number: T 0323/19 - 3.3.01

Application Number: 11721616.8

Publication Number: 2568988

IPC: A61K31/7042, A61K31/7004,
A61K31/381, A61K9/28, A61K9/20,
A61K47/38, A61K47/26, A61P3/10

Language of the proceedings: EN

Title of invention:
PHARMACEUTICAL FORMULATIONS COMPRISING 1-(BETA-D-
GLUCOPYRANOSYL)-2-THIENYLMETHYLBENZENE DERIVATIVES AS
INHIBITORS OF SGLT

Patent Proprietor:
Janssen Pharmaceutica, N.V.

Opponent:
LEK Pharmaceutical

Headword:
SGLT inhibitor tablet/JANSSEN

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84



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 0323/19 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 11 February 2022

Appellant: LEK Pharmaceuticals d.d.
(Opponent) Verovskova 57
1526 Ljubljana (SI)

Representative: Maiwald Patent- und Rechtsanwalts-gesellschaft mbH
Elisenhof
Elisenstraße 3
80335 München (DE)

Respondent: Janssen Pharmaceutica, N.V.
(Patent Proprietor) Turnhoutseweg 30
2340 Beerse (BE)

Representative: Carpmiels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 November 2018 concerning maintenance of the
European Patent No. 2568988 in amended form**

Composition of the Board:

Chairman A. Lindner
Members: J. Molina de Alba
L. Bühler

Summary of Facts and Submissions

- I. The decision under appeal is the opposition division's decision that European patent No. 2 568 988 as amended according to the main request, and the invention to which it relates, met the requirements of the EPC.
- II. The opponent (appellant) filed an appeal requesting that the decision be set aside and the patent be revoked in its entirety.
- III. In its reply to the statement of grounds of appeal, the patent proprietor (respondent) requested that the appeal be dismissed.
- IV. The board summoned the parties to oral proceedings and gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA 2020.
- V. By letter dated 1 February 2022, the respondent stated that it no longer approved the text in which the patent had been granted. In addition, it withdrew all outstanding requests, including its claim requests and its request for oral proceedings.

Reasons for the Decision

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

2. By disapproving the granted text of the patent and withdrawing all pending requests, the respondent has withdrawn its approval of any text for maintenance of the patent. Hence, there is no approved text of the patent on the basis of which the board can decide on the appeal.

3. In these circumstances, it is established case law that the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, section IV.D.2). The board has no reason to deviate from this case law.

Order

For these reasons it is decided that:

The patent is revoked.

The Registrar:

The Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated