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**Datasheet for the decision
of 12 July 2021**

Case Number: T 0577/19 - 3.3.01

Application Number: 12806382.3

Publication Number: 2793886

IPC: A61K31/46, A61K9/00, A61K47/10,
A61K47/12, A61M15/00, A61P11/00

Language of the proceedings: EN

Title of invention:

AN INHALABLE MEDICAMENT COMPRISING TIOTROPIUM

Patent Proprietor:

Teva Branded Pharmaceutical Products R & D, Inc.

Opponent:

3M United Kingdom plc

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Basis of decision - text or agreement to text withdrawn by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, T 0507/00, T 0655/01, T 1655/07, T 0545/10



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 0577/19 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 12 July 2021

Appellant: 3M United Kingdom plc
(Opponent) 3M Centre
Cain Road
Bracknell
Berkshire RG12 8HT (GB)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Respondent: Teva Branded Pharmaceutical Products R & D, Inc.
(Patent Proprietor) 41 Moores Road
Frazer, Pennsylvania 19355 (US)

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 December 2018 concerning maintenance of the
European Patent No. 2793886 in amended form.**

Composition of the Board:

Chairman A. Lindner
Members: R. Hauss
L. Bühler

Summary of Facts and Submissions

- I. The decision under appeal is the opposition division's interlocutory decision, announced on 12 November 2018 and posted on 10 December 2018, finding that European patent No. 2 793 886 as amended in the form of the main request met the requirements of the EPC.
- II. The opponent (appellant) filed an appeal against this decision, requesting that it be set aside and that the patent be revoked.
- III. The patent proprietor (respondent) requested, as its main request, that the appeal be dismissed and stated that it maintained its first to seventh auxiliary requests previously submitted in the proceedings before the opposition division.
- IV. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- V. By letter dated 20 May 2021, the respondent stated that it withdrew its approval (respondent's letter dated 18 July 2016) of the text as proposed for grant, withdrew all other requests on file, would not be filing any further requests on this case and anticipated receiving the written decision of the board in due course.
- VI. The board subsequently cancelled the oral proceedings.

Reasons for the Decision

1. The appeal is 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. As the patent proprietor withdrew its approval of any text for the maintenance of the patent in suit, there is no valid text on the basis of which the board can consider the appeal.
4. 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; 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 Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated