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**Datasheet for the decision
of 25 March 2020**

Case Number: T 1374/19 - 3.3.07
Application Number: 10181264.2
Publication Number: 2258345
IPC: A61K9/14, A61K9/20, A61K31/425
Language of the proceedings: EN

Title of invention:

SOLID PHARMACEUTICAL DOSAGE FORM COMPRISING AN HIV PROTEASE
INHIBITOR SOLID DISPERSION

Patent Proprietor:

AbbVie Inc.

Opponents:

F.Hoffmann-La Roche AG
Teva Pharmaceutical Industries Ltd.
Janssen Sciences Ireland UC
Hexal AG

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Revocation of the patent in opposition appeal proceedings at
the request of the patent proprietor



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1374/19 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 25 March 2020

Appellant: F.Hoffmann-La Roche AG
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Representative: Vossius & Partner
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Respondent: AbbVie Inc.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
18 March 2019 concerning maintenance of the
European Patent No. 2258345 in amended form.**

Composition of the Board:

Chairman D. Boulois
Members: E. Duval
Y. Podbielski

Summary of Facts and Submissions

- I. The appeal was filed by opponent 1 (appellant) against the interlocutory decision of the opposition division finding that, on the basis of the main request then on file, the patent in suit met the requirements of the EPC.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked. The respondent (proprietor) requested that the appeal be dismissed (i.e. that the patent be maintained in the form in which it had been maintained by the opposition division) or, as an auxiliary measure, that the patent be maintained on the basis of one of the auxiliary requests filed with the reply to the statement setting out the grounds of appeal.
- III. The parties as of right - opponents 2 and 3 - made no submissions in the appeal proceedings. Opponent 4 had withdrawn its opposition during the course of the opposition proceedings.
- IV. In its letter dated 23 March 2020, filed electronically on the same date, the respondent declared that it no longer approved the text in which the patent had been granted, and it withdrew all requests on file.

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.

2. Such an agreement cannot be deemed to exist where - as in the present case - the proprietor expressly states that it no longer approves the text of the patent as granted and withdraws all pending requests.
3. There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 9th edition, IV.D.2).

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:



B. Atienza Vivancos

D. Boulois

Decision electronically authenticated