

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 29 November 2022**

Case Number: T 1484/19 - 3.3.08

Application Number: 07761581.3

Publication Number: 2013628

IPC: G01N33/68

Language of the proceedings: EN

Title of invention:

METHODS OF EVALUATING PEPTIDE MIXTURES

Patent Proprietor:

Momenta Pharmaceuticals, Inc.

Opponents:

Generics (U.K.) Limited (trading as Mylan)
Synthon B.V.

Headword:

Methods for evaluating peptide mixtures/MOMENTA

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Basis of decision - text or agreement to text withdrawn by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, T 0186/84, T 0655/01, T 1526/06, T 2405/12

Catchword:



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 1484/19 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 29 November 2022

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

Representative: Clarke, Lionel Paul
Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Appellant: Synthon B.V.
(Opponent 2) Microweg 22
6545 CM Nijmegen (NL)

Representative: Prins, Hendrik Willem
Arnold & Siedsma
Bezuidenhoutseweg 57
2594 AC The Hague (NL)

Respondent: Momenta Pharmaceuticals, Inc.
(Patent Proprietor) 301 Binney Street
Cambridge, MA 02142 (US)

Representative: Bassett, Richard
Potter Clarkson
The Belgrave Centre
Talbot Street
Nottingham NG1 5GG (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 18 March 2019
rejecting the opposition filed against European**

patent No. 2013628 pursuant to Article 101(2)
EPC

Composition of the Board:

Chairwoman T. Sommerfeld

Members: D. Pilat

 L. Bühler

Summary of Facts and Submissions

- I. Appeals were filed by opponents 1 and 2 against the decision of the opposition division rejecting their oppositions.
- II. The appellants requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- III. With their letter dated 24 November 2022 the patent proprietor stated that they no longer approved the text in which the patent had been granted and would not submit an amended text. They also withdrew all auxiliary requests filed during appeal proceedings.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings.
2. By disapproving the granted text of the patent in any form, the patent proprietor has withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text of the patent on the basis of which the board can consider the appeals filed by the opponents.
3. In the case of T 73/84 (OJ EPO 1985, 241, Headnote and Reasons), the board decided that if the proprietor of a

European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed inter alia by decisions T 186/84 (OJ EPO 1986, 79), T 655/01, T 1526/06 and T 2405/12.

4. Furthermore, as clarified in decision T 186/84, the examination as to whether the grounds for opposition laid down in Article 100 EPC prejudice the maintenance of the patent becomes not merely superfluous but impossible since the absence of a valid text of the patent precludes any substantive examination of the alleged impediments to patentability.
5. In the circumstances of the present case, the board sees no reasons for deviating from the principles set out in the above-mentioned decisions. The patent must therefore be revoked, without a substantive examination first being carried out.

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:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated