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**Datasheet for the decision
of 16 November 2022**

Case Number: T 1584/19 - 3.3.04

Application Number: 09791127.5

Publication Number: 2326329

IPC: A61K31/517, A61K31/7068,
A61K45/06, A61P35/00

Language of the proceedings: EN

Title of invention:

Antineoplastic combinations of 4-anilino-3-cyanoquinolines and capecitabine

Patent Proprietor:

Wyeth LLC

Opponent:

Hexal AG

Headword:

Antineoplastic combinations / WYETH

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Basis of decision - text or agreement to text withdrawn by patent proprietor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

Boards of Appeal of the
European Patent Office
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Case Number: T 1584/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 16 November 2022

Appellant: Hexal AG
(Opponent) Industriestraße 25
83607 Holzkirchen (DE)

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

Respondent: Wyeth LLC
(Patent Proprietor) 235 East 42nd Street
New York, NY 10017 (US)

Representative: Jones Day
Rechtsanwälte, Attorneys-at-Law, Patentanwälte
Prinzregentenstraße 11
80538 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 March 2019
rejecting the opposition filed against European
patent No. 2326329 pursuant to
Article 101(2) EPC**

Composition of the Board:

Chairwoman R. Hauss
Members: S. Albrecht
M. Blasi

Summary of Facts and Submissions

- I. The appeal, duly lodged by the opponent (appellant), lies against the opposition division's decision rejecting the opposition against European patent EP 2 326 329.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. The patent proprietor (respondent) replied to the appeal, requesting that the appeal be dismissed or, as an auxiliary measure, that the patent be maintained in amended form on the basis of the claims of a first auxiliary request filed on 12 December 2018.
- IV. The board appointed oral proceedings in conformity with the parties' requests and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- V. During oral proceedings on 16 November 2022, the respondent declared that it no longer approved the text in which the patent was granted and that it withdrew the first auxiliary request.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 EPC and Rule 99 EPC and is admissible.
2. Pursuant to Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

3. Such an agreement is deemed not to exist if the patent proprietor - as in the present case - expressly declares that it no longer approves the text in which the patent was granted and withdraws all pending requests relating to an amended version of the patent.
4. There is therefore no longer any text of the patent in the proceedings on the basis of which the board can consider compliance of the patent as granted or amended with the requirements of the EPC. No other issues are to be decided upon in the present appeal case.
5. 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, 10th edition 2022, IV.D.2).

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:



I. Aperribay

R. Hauss

Decision electronically authenticated